IN THE COURT OF APPEAL OF TANZANIA

AT MOSHI

(CORAM: MWARIJA, J.A., KENTE, J.A. And MGONYA, J.A.)

CRIMINAL APPEAL NO. 374 OF 2020

GEORGE JONAS LESILWA ..... APPELLANT

VERSUS

THE REPUBLIC ..... RESPONDENT

(Appeal from the judgment of the High Court of Tanzania at Moshi)

(Mutungi, J.)

dated the 30th day of July, 2020

in

Criminal Appeal No. 03 of 2020

JUDGMENT OF THE COURT

15th March & 16th April, 2024

KENTE, J.A.:

The appellant George Jonas Lesilwa appeared before the District Court of Moshi (the trial court), where he was arraigned and charged with the offence of unnatural offence contrary to section 154 (1) (a) of the Penal Code.

The particulars of offence alleged that, on unknown dates between April and May, 2018 at "*Majengo kwa Mtei*" area within the District of Moshi in Kilimanjaro Region, the appellant had carnal knowledge of an eleven year old boy (name withheld) against the order of nature. For

purposes of cushioning him from stigma, we shall in this judgment use "PW2" or the victim interchangeably to refer to the said child.

The appellant denied the charge whereupon the matter proceeded to trial. At the conclusion of the trial, he was found guilty as charged, convicted, and sentenced to life imprisonment.

Embittered by the decision of the trial court, the appellant appealed to the High Court at Moshi. After hearing both parties, the learned Judge of the first appellate court (Mutungi, J.), held that, the evidence adduced by the prosecution outweighed the allegation made by the appellant that the prosecution case was a frame up by his enemies. She then proceeded to dismiss the appeal in its entirety.

Before the trial court, the evidence of the prosecution came from four witnesses. PW1 was the mother of the victim. She testified that, at the time which was material to the occurrence of the charged offence, she and her two young children who had out attained school-age were in Morogoro where she had gone to see her husband who had recently been transferred thereto from Moshi. The victim who was then in Primary School had to remain behind attending school. Accordingly, PW1 told the trial court that, she left him under the care of her neighbour one

Saidi Hemed. Upon her return, PW2 complained to her that, during her absence, he was subjected to some kinds of torture. However, PW1 then did not ask the victim the nature and perpetrator of the alleged torture as, she said, it was already in the late hours of the night.

A few days later, the appellant allegedly followed the victim to the mosque and threatened to kill him, for no apparent reason. After the appellant remained persistent in pursuing her son, PW1 became worried and she had to enquire from PW2, the reason behind the growing feud between him and the appellant. That is when PW2 decided to disclose to his mother what had actually befallen him when she was away in Morogoro. He told her that, during her absence, the appellant had anal intercourse with him on two different occasions.

Bewildered and particularly angered upon receiving this disturbing report, PW1 called Saidi who was taking care of PW2 and told him to call the appellant. When Saidi and the appellant went to PW1's home, PW2 is said to have narrated at great length what the appellant did to him during his mother's absence.

Subsequent to PW2's disturbing information, and in order to avert the imminent danger of a tiff between neighbours, a meeting which

brought together PW1 and her con-tenants who, incidentally included the appellant as well as their landlord, was convened. However, from the details narrated by PW1, what surfaced was sufficient to indicate that the meeting did not mitigate but aggravate the situation. At the end of the said meeting, the two sides could not settle their differences and, PW1 was accordingly advised to report the incident to the Police.

As earlier indicated, PW2 was the victim and therefore an eyewitness to the alleged sexual abuse. He testified that on a day he could not recall in April, 2018 after he arrived home from school, the appellant invited him into his room to get food. He gave him ugali and vegetables. PW2 told the trial court that, at that time, the appellant was alone as his wife and little son had gone away.

In a cruel twist of fate, PW2 told the trial court, before he could finish eating, the appellant allegedly closed the door together with the window and tuned up the radio volume. PW2 recounted that, to achieve his purpose, the appellant then took him into the bedroom where he ordered him to bend before he stripped him naked. Having himself taken off his trousers, he went on inserting his manhood into PW2's anus

causing him to suffer pain in the process. According to PW2, that was the first sexual encounter with the appellant.

Regarding the second encounter which occurred on one Saturday, PW2 recounted how he was lured by the appellant to go into his room to get food and watch the television. He told the trial court that, since he was obsessively enthusiastic to watching war films and movies, he could not decline the appellant's invitation. He went on to say that, as he continued watching the TV, the appellant told him that he was feeling cold. Not long thereafter and, in a surprising turn of events, the appellant allegedly caught hold of his arm and took off his trousers as he forced him to bend on the sofa. After taking off his own trousers, he went on to, once again, insert his phallus into his anus.

Asked as to, by that time, where was Saidi who was entrusted with the task of taking care of him, PW2 is on record as having told the trial court that, Saidi used to leave him and go to his workplace while the appellant's housemaid who could have probably helped him to stave off the alleged molestation, was in the habit of going to see her grandmother leaving him alone. It was therefore alleged that, the appellant took the advantage the lonely days in the house to proceed

with whatever he wanted to do hoping that it would have gone undetected.

PW2 told the trial court that, he was cautioned by the appellant against revealing his actions to anyone but when his mother returned from Morogoro and, as the appellant's continous harassments and threats became intolerable, he decided to come out in the open and disclose the intimate matter to his mother, whatever the cost.

With respect to why he had received threats from the appellant, PW2 told the trial court that, it was after the appellant had been informed of his complaints against his bad manners. PW2 categorically stated that he had warned one of his friends called Brian not to go to the appellant's home or else risk being sexually abused as he himself had been.

Under cross-examination, once again, the witness told the trial court of the appellant's threat to his life and that in order to protect himself, he saw it fit to disclose the matter to his mother.

PW3 Elimokoa Masamu was a Doctor then stationed at Mawenzi Hospital in Kilimanjaro. His medical examination of PW2 on 28th May, 2018 revealed dilatation of the anal sphincter. He also told the trial court

that, although further examination of the victim did not reveal any signs of HIV/AIDS infection, he was given some medication for purposes of prevention.

Next on the list of the prosecution witnesses, was No. F4369 Seargent Langasani, a Police Officer who was then stationed at Majengo Police Post specifically attached to the Gender and Child Protection Unit. He recounted how on 28th May, 2018 he was called in to investigate this case and that he begun by referring and accompanying the victim to hospital for medical examination. Later on, he recorded the statements of the intended prosecution witnesses. He also told the trial court that, he visited the appellant's home and drew a sketch map of the crime scene. His investigation led to the conclusion that the appellant who had already been arrested and was under Police restraint, was responsible for sexually abusing PW2.

For his part, the appellant denied committing the offence. While admitting to know the victim and his mother very well as they were his neighbours, he told the trial court that, indeed when PW1 went to Morogoro, she left her son under the care of one Saidi Hemed who however, could not take proper care of PW2 as he was always busy

pursuing studies at one college in Moshi. Given the circumstances, the appellant told the trial court that, Saidi asked him to give food and exercise books to PW2 whenever he was absent. The appellant went on to say that, as he was living with his wife and child together with a housemaid, he had to talk to his family members who readily accepted the request by Saidi.

Moreover, the appellant went on telling the trial court that, he stayed with PW2 without any problem until his mother returned from Morogoro. According to the appellant, that is when the misunderstandings between him and PW1 begun.

He claimed that, by the time PW1 returned from Morogoro, PW2's behaviour had changed completely in several negative ways. According to the appellant, PW2 had stopped going to the mosque and he would sometimes play truancy at school as to affect his academic progress. Moreover, the appellant accused PW2 for occasionally refusing to take bath. To arrest the worsening situation, the appellant told the trial court that, he had decided, towards the end of March, 2018 to administer corporal punishment on PW2, a course of action which proved to be

worthwhile as PW2 was then able to resume schooling regularly and going to madrasah.

But then, according to the appellant, in April, 2018, PW2 went dancing at a night club and came back sometime after midnight. Hurt and annoyed that PW2 had gone back to his ill-manners, the appellant told the trial court that, he gave him corporal punishment once more. He narrated further that, this is what caused PW2 to tell his mother that he was tortured during her absence and that, much to his chagrin, PW1 completely believed what she was told by PW2 as to irrationally take umbrage against him.

With regard to the charges levelled against him, the appellant denied in categorical terms to have sexually abused the victim. He maintained that the allegations of having sexual intercourse with PW2 were first raised at the meeting on 16th May, 2018 and that he firmly denied them. He called his wife one Mariam George (DW2) as witness to render support to his defence version regarding PW1's anger and possible vengefulness.

After analysing the evidence before her together with the case law in relation to sexual offences, the learned trial magistrate found that,

indeed PW2 was a victim of an unnatural offence and that, the perpetrator of the said offence was none other than the appellant. In sum, the trial court found that the prosecution had proved its case beyond reasonable doubt and the appellant was subsequently convicted and sentenced to life imprisonment.

Disconsolate at the conviction and having received the certainly off-putting life imprisonment sentence, the appellant decided to appeal to the High Court contending generally, among other things, that, there were some material procedural lapses in his trial which must have vitiated his conviction. He also challenged the trial court for finding and subsequently holding that the case against him was proved beyond doubt.

After hearing the parties, the learned Judge of the first appellate court was of the same view as was the trial magistrate that, the prosecution had led evidence which proved the appellant's guilt to the required standard. She ultimately went on dismissing the appellant's appeal for lack of merit.

Dissatisfied with the High Court's judgment, the appellant appealed to this Court complaining, both in the memorandum and the

supplementary memorandum of appeal of which we can condense and paraphrase, thus-

1. *The trial and the first appellate court failed to evaluate his defence evidence and give reasons for not accepting it.*
2. *The first appellate court failed to find that the prosecution had not proved the charge against him by leading evidence which was full of doubts which ought to have been resolved in his favour.*
3. *The evidence of PW2 was received in contravention of section 127 (2) of the Evidence Act.*
4. *The charge was incurably defective for not citing the sentence provision; and that*
5. *The two lower courts ought to have drawn an adverse inference against the prosecution case for failure to summon material witnesses.*

Before us, the appellant appeared in person without any legal representation while Ms. Jenipher Massue, learned Principal State Attorney assisted by Ms. Veronica Moshi, learned State Attorney appeared for the respondent. As stated earlier, the appellant relied on his written submissions which he had filed belatedly and scantly highlighted at the time of hearing.

To begin with, the appellant contended that, the evidence of PW2 was recorded in total violation of section 127 (2) of the Evidence Act as the trial Magistrate did not conduct a *voire dire* test on PW2 with the view to determining his competence to testify. Without elaborating, the appellant referred to the unreported case of **John Mkorongo James v. Republic**, Criminal Appeal No. 498 of 2020 (unreported) ostensibly to support his position.

Based on the foregoing contention, the appellant invited us to discard the testimony of PW2 and find that such evidence could not support his conviction as it was received in contravention of the mandatory requirements of the law.

Moving forward but without specifically addressing himself to each ground of appeal, the appellant submitted further that, upon discarding the evidence of PW2, there would be no independent corroborative evidence linking him with the offence as there was no any other attempt by the prosecution witnesses to prove that indeed it was himself who had sexually molested the victim.

Regarding the evidence of PW1, the appellant contended that, her testimony was rather confusing and very unreliable in so far as the

actual dates of the commission of the offence are concerned. He further charged that, both PW1 and PW2 did not even know which offence they went to report to the Police Station in that, throughout the trial, it was not established whether it was unnatural offence or bodily assault on PW2.

On ground number 5, the appellant submitted very briefly that, the victim's father, the landlord and Saidi Hemed who was entrusted to take care of the victim during his mother's absence, were material witnesses and that failure by the prosecution to call them as witnesses ought to have made the lower courts to raise eyebrows and draw an adverse inference against the prosecution case.

Reverting to the first ground, the appellant complained that, the two lower courts strayed into error by failing to evaluate his defence evidence and that, as a result, they ended up falling for the prosecution case, hook line and sinker. He urged us to step into the shoes of the two lower courts and gauge his evidence against the evidence of the prosecution with a view to reaching our own conclusion.

Submitting in reply, Ms. Massue responded in a similar fashion as the one adopted by the appellant. The learned Principal State Attorney

contended in the first place that, going by the evidence led by the prosecution, there is no gainsaying that the evidence of PW2 was the real smoking gun. After briefly taking us through the two requisites to the offence of unnatural offence which are "having carnal knowledge" and "against the order of nature", Ms. Massue went on submitting that PW2 had given evidence which showed that he was carnally known by the appellant and that the said act was through anal intercourse.

In further reference to the evidence of PW2, Ms. Massue submitted that, PW2 was a reliable witness whose evidence was not materially controverted.

With regard to the contention by the appellant that both PW1 and PW2 did not tell the trial court the specific offence which they went to report to the Police, the learned Principal State Attorney maintained that PW1 was concise and accurate and she accordingly testified that it was the molestation of her son by the appellant which was reported to the police and that, that report was made on 26th May, 2018.

With regard to the complaint by the appellant that the prosecution had failed to call vital witnesses without any compelling reason to prevent them from testifying and that because of such failure, the lower

courts ought to have drawn an adverse inference against the prosecution case, Ms Massue submitted in the first place that, in law, there is no particular number of witnesses which is required to prove any fact as even a single witness can be called to prove a fact. In the second place, the learned Principal State Attorney submitted that, the three persons mentioned by the appellant were of no significance because whatever they could have told the trial court, would not directly link the appellant to the charged offence.

Responding to the appellant's complaint that his defence evidence was not considered by the lower courts, Ms. Massue submitted that, the appellant's defence version was considered and evaluated by the lower courts but rejected as there was over whelming evidence on the record that proved beyond doubt the offence of which the appellant was convicted.

With respect to the third ground of appeal in which the appellant faulted the lower courts for basing his conviction and sentence on the evidence of PW2 who was a child of tender age but whose evidence was allegedly received in contravention of section 127 (2) of the Evidence Act, Ms. Massue submitted that, the trial Magistrate, so rightly, both in

law and in fact, led the victim to promise to tell the truth and not to lie as required by law. Clarifying, the learned Principal State Attorney contended that, section 127 (2) of the Evidence Act did not make it mandatory for the questions posed by the court to the child witness and the answers thereto to be recorded as alleged by the appellant. According to the learned Principal State Attorney, the absence on the record of such questions and answers did not render the evidence of the child witness inadmissible and, on that account, the case cited to us by the appellant was distinguishable from the instant case.

Ms. Massue submitted in conclusion that, on the evidence and the facts before the courts below, the case against the appellant was proved to the required standard and therefore, the complaint by the appellant, was without cause.

Since it is a settled position of the law that, in sexual related offences, true evidence of the alleged offence has to come from the victim, we shall first deal with the question as to whether or not the evidence of PW2 was received according to law.

In answering the above-posed question, it is instructive to state the law in this area and inevitably, the starting point here is section 127 (2) of the Evidence Act which explicitly provides that:

> *"A child of tender age may give evidence without taking oath or making an affirmation but shall before giving evidence promise to tell the truth to the court and not to tell any lies".*

It is also pertinent to note that, when PW2 appeared before the trial court on 11th September, 2018 and before he started giving evidence what transpired then as appearing on page 21 of the record of appeal, runs as follows:

> *Court: The prosecution hearing continues in camera.*
>
> *S/A: My witness is aged 11 years. His name is YA.*
>
> *YA states:*
>
> *"I promise to tell the truth in court, not lies".*
>
> *Court: Section 26 of the Written Laws (Miscellaneous Amendment) Act No. 4 of 2016 is complied with. His evidence is therefore recorded by this court as follows:*

This Court had the occasion to expound the import of s. 127 (2) of the Evidence Act when faced with a similar situation in the case of

Robert Fransis Mwankenja v. Republic, Criminal Appeal No. 335 of 2018 (unreported) in which before giving evidence, a child of tender age had similarly made a promise to the trial court, thus:

> *"I promise to tell the truth to the court and not to tell any lies".*

After reviewing some of our earlier decisions on the same subject, we went on holding in that case that, given that the witness gave a promise to tell the truth, it did not matter whether or not he knew the meaning of oath.

Going by this position of the law, it is crystal clear that, where a child of tender age gives evidence without taking oath or making an affirmation but after promising to tell the truth to the court and not to tell lies, as it happened in this case, the need to conduct a *voire dire* test as the appellant insisted, does not arise.

For the sake of completeness, we are constrained, before leaving this subject, to observe that, going by the above interpretation of the law, it must be clear that, the evidence of a child of tender age should not be discarded on flimsy reasons without proof on a balance of probabilities that there was something lacking that really affected the

quality and credibility of such evidence. In other words, an appellate court should look at the substance of the complaint raised by the appellant and see whether the alleged non-compliance with section 127 (2) of the Evidence Act was of such a nature as to be said, in rational terms, to have produced a substantial defect upon such evidence. The above observation, no doubt is the reason behind the recent introduction of section 127 (7) of the Evidence Act as amended by the Legal Sector Laws (Miscellaneous Amendment) Act No. 11 of 2023, which we find it imperative to reproduce, thus:

> *"Notwithstanding any other law to the contrary, failure by a child of tender age to meet the provisions of subsection (2) shall not render the evidence of such child in-admissible".*

Having said so, we need not belabour the complaint by the appellant any further. Suffice it to say that, all in all, we are satisfied that the evidence of PW2 was taken in conformity with the dictates of the law and, we thus dismiss the first ground of appeal in the supplementary memorandum of appeal.

Another complaint raised by the appellant is that, the sentence provision for the offence of unnatural offence of which he was convicted

was not cited in the charge. Notably, apart from raising this ground, the appellant did not make any submissions to expound on it. However, the gravamen of his grief appears to be that, the charge against him was defective for non-citation of the sentence provision.

On her part, Ms. Massue opposed that contention. She took a two-pronged argument and subsequently submitted that, the alleged omission was non-existent; and if it existed; it was curable in terms of section 388 of the CPA. In the circumstances, she could not see any merit in the appellant's complaint.

Indeed, a cursory look at the charge sheet reveals that the charge against the appellant cited section 154 (1) (a) of the Penal Code which provides that:

> "Any person who-
>
> *(a) Has carnal knowledge of any person against the order of nature;*
>
> *(b) NA*
>
> *(c) NA*
>
> *Commits an offence and is liable to imprisonment for life and in any case to*

imprisonment for a term of not less than thirty years".

Quite clearly, as correctly submitted by Ms. Massue, there is no independent provision either in, or outside section 154 of the Penal Code which provides for a punishment in respect of the offence of unnatural offence. In other words, section 154 of the Penal Code unites two distinct components as it creates both the offence of unnatural offence and prescribe its punishment. For this reason, we are of the respectful view that, the complaint by the appellant that the charge was defective for not citing the sentence provision, is due perhaps to a misconception as otherwise, it lacked legal basis. We accordingly dismiss it.

Another complaint raised by the appellant to which we wish to advert, concerns the alleged failure by the prosecution to call the landlord, the victim's father, and Saidi Hemed who, according to the appellant, were material witnesses to the prosecution case.

Bearing in mind this ground of complaint and Ms. Massue's reply submissions, we shall first set out to demystify the concept "material witness" to a case. According to the applicable literature and jurisprudence, a material witness is the witness who can testify about

matters having some logical connection with the consequential facts especially if few others, if any, know about these matters. (See **Black's Law Dictionary** 8th Ed. page 1634). Generally, the information the material witness possesses has a strong probative value and, very few, if any witness, possess the same information. It should be needless to say, at this juncture that, probative value is the probability of evidence to reach its proof purpose of the fact in issue.

In view of the above demystification, we shall now briefly proceed to determine if, in the circumstances of this case, the three persons mentioned by the appellant were material witnesses to the prosecution case. We have glanced through the record which loudly speaks for itself. Indeed, none of the said three persons appeared to testify in support of the prosecution case but, as we shall hereinafter demonstrate, that was for obvious reasons. None of the above-mentioned persons had either direct or corroborative evidence to support the evidence of the victim. As such, none of them could have given any evidence other than hearsay evidence to incriminate the appellant since all of them were not present when the offence occurred. In a situation such as this, it would be rather a misnomer to call them "material witnesses" as the appellant

wrongly perceived them. That being the case, it would serve no purpose for the prosecution to call anyone of them as witness, and once that conclusion is reached, we go along with Ms. Massue that the appellant's complaint in the fifth ground of appeal is based solely on misconceptions hence destitute of merit. We accordingly dismiss it.

Next is the complaint by the appellant that his defence evidence was not evaluated and no reason was given by the lower courts to account for its rejection. As to this complaint, we are mindful of our earlier decisions in which we have held on several occasions that, an accused person's defence has to be considered, as of necessity, even if, in the end result, the defence would have been rejected and that, this principle is elementary but, nonetheless, fundamental to the extent that failure to take into account any defence put up by an accused person, will vitiate the ultimate conviction. (See **Venance Nuba and Another v. Republic**, Criminal Appeal No. 425 of 2013 (unreported)).

However, as correctly submitted by Ms. Massue, and from our own reading of the record of appeal (at pages 60 and 163), it is plainly clear that the appellant's defence version was duly considered by the lower courts but rejected on the grounds that it was far outweighed by the

prosecution evidence which the lower courts found credible. Given the circumstances, the only thing one can say here is that, if the truth is told, rather than his defence evidence not being considered by the lower courts, the appellant felt deeply resentful at having been convicted and his defence version rejected, pure and simple.

To put it in a much wider context, it is particularly instructive to observe that, the court's rejection of the accused person's defence evidence in a criminal trial, is widely distinct from not considering such evidence at all. It must therefore be understood, if we may further put it into context, taking into consideration the present circumstances that, while the often raised ground of appeal that the defence evidence was not considered by the trial court or by the first appellate court may sometimes raise genuine concerns, it does not necessarily follow as many tend to perpetuate the myth that, for the defence evidence to be taken as having been considered, it must have been accepted by the court in the first place. It is for this reason, that we feel constrained to hold that, the appellant's complaint on that aspect has no basis both in law and in fact and, we accordingly dismiss it.

The last point to consider and decide is whether or not the case against the appellant was proved to the required standard as to warrant his conviction and sentence. That is the controversy which raged throughout the trial and the first appeal.

In **Selemani Makumba v. Republic** [2006] T.L.R. 379 which is currently the leading case on the evidence needed to prove an alleged sexual offence, we held that, true evidence of the alleged sexual act has to come from the victim.

Another important point to remember is that, in order to avoid the dangers of false complaint and false incrimination in any sexual offence, like the one in the instant case, there must be sufficient evidence to prove both the commission of the offence together with the identity of the offender. It is from the above position of the law that we propose to deal finally with the victim's direct evidence as we believe it is central to this appeal.

In the present case, the evidence of the victim was briefly that he was molested by none other than the appellant. Bearing in mind the findings by PW3, a Medical Doctor who examined the victim, we wish to observe very briefly that, indeed there was no dispute at the trial that

the victim was molested. The nagging question was, and still is on the identity of the molester.

The evidence regarding the sequence in which the events culminating in the victim's molestation as they unfolded, sought to establish that, taking advantage of the loneliness and suspicious circumstances that were created at his home during the day time, the appellant allegedly offered the victim food, who would then eat while watching television. PW2 told the trial court that, in the course the appellant had anal intercourse with him on two occasions and as a result, he sustained injuries. This was confirmed by PW3 who examined the victim and discovered dilatation of his anal sphincter. In other words, a medical examination conducted on the victim confirmed his complaint that he had recently been engaged in anal intercourse. But if we may repeat, the question we have to determine here, is with who?

With regard to the identity of the offender, it must be noted that, the victim being a close neighbour had no problem identifying the appellant and, in the circumstances, there was no possibility of a mistaken identity which we should say, was clearly established. It is as well worthwile to observe that, the evidence of the victim which was

straight forward and credible, was not materially controverted by the appellant during cross examination. It should be very elementary to state at this juncture that, an accused person is expected to cross examine prosecution witnesses with a view to challenging facts which are disputed during trial. Failure to cross examine a witness on a material fact may lead the court to infer admission of that fact.

On our part, having considered the entire evidence led in support of the prosecution case, we see no reason to disbelieve the victim who narrated in graphic detail the embarrassing and painful ordeals which he went through and for that matter, we rule out the possibility of a frame up by what the appellant called his enemies. For, we cannot find any motive to falsely incriminate the appellant that can be discerned from the evidence of PW1 and PW2 in relation to the offence of which the appellant was convicted.

But on the flip side, there was another form of evidence sufficiently telling against the appellant which, however, was not seriously pursued by the prosecution as such but came out in the form of circumstantial evidence. Its best content and illustration is in the evidence of PW1 and PW2 who told the trial court that, subsequent to the occurrence of the

charged offence, the appellant, on several occasions threatened to kill PW2. Just out of curiosity than ignorance, one may ask as to why would the appellant uncharacteristically, threaten to kill a child aged eleven years, if his intention was not to further intimidate and subjugate him for fear that PW2 was about to spill the beans? If the appellant is not seen in this way, then how best could one understand his threats to kill a child of his neighbour for the reasons that were not disclosed?

In these circumstances, it seems to us, but without intending to relieve the prosecution of its duty to prove its case to the required standard that, the prosecution case in this regard is substantially helped, if not made out by the evidence of the appellant's odd conduct as hereinabove illustrated. Needless to say, such evidence of the appellant's conducts to PW2 after the incident, can be admitted to draw an inference that indeed PW2 was sexually molested by the appellant who subsequently made an all-out effort to prevent the victim from revealing his actions to anyone.

It is from this discourse that, we cannot fault the trial and the first appellate court, for arriving at the conclusion that the case against the

appellant was proved to the required standard and therefore, there is no basis for disturbing their decisions.

In the ultimate event, this appeal fails and is accordingly dismissed in its entirety.

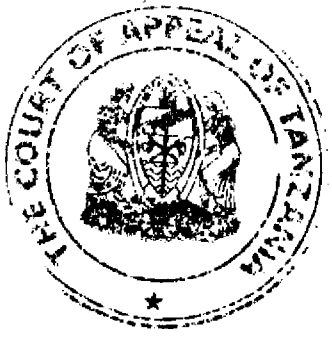
DATED at **DAR ES SALAAM** this 15th day of April, 2024.

A. G. MWARIJA
JUSTICE OF APPEAL

P. M. KENTE
JUSTICE OF APPEAL

L. E. MGONYA
JUSTICE OF APPEAL

The Judgment delivered this 16th day of April, 2024 in the presence of the Appellant in person - linked through video facility from Moshi High Court and Mr. Titus Aron, learned State Attorney for the respondent/Republic is hereby certified as a true copy of the original.



R. W. CHAUNGU
DEPUTY REGISTRAR
COURT OF APPEAL