IN THE COURT OF APPEAL OF TANZANIA

AT TABORA

(CORAM: LILA, J.A, MWAMBEGELE, J.A And WAMBALI, J.A.)

CRIMINAL APPEAL NO. 488 OF 2015

KUBEZYA JOHN ..... APPELLANT

VERSUS

THE REPUBLIC ..... RESPONDENT

(Appeal from the decision of the High Court of Tanzania at Tabora)

(Mruma, J.)

dated the 16th day of September, 2015
in
DC Criminal Appeal No. 181 of 2014

JUDGMENT OF THE COURT

6th & 12th December, 2019

MWAMBEGELE, J. A.:

The District Court of Kahama convicted the appellant Kubezya John of the offence of armed robbery contrary to section 287A of the Penal Code, Cap. 16 of the Revised Edition, 2002 and sentenced him to life in prison. His first appeal to the High Court partially succeeded in that the conviction was sustained but the sentence was reduced to thirty years in prison. Still aggrieved, he has come to this Court on second appeal.

We wish to interpose here that this appeal was first scheduled for hearing on 02.12.2019. We realised from the affidavit deposed by Beda Robert Nyaki; the Deputy Registrar of the High Court, Tabora Registry, that the proceedings of the case from the trial court to the High Court had been missing. It appears the court files had been misplaced in the High Court and efforts to trace them have been futile. Adhering to our direction in **Robert Madololyo v. Republic**, Criminal Appeal No. 486 of 2015 and **Nasoro v. Republic**, Criminal Appeal No. 404 of 2015 (both unreported), the Deputy Registrar made efforts to reconstruct the lost file using stakeholders. However, he managed to get only the record of the trial court, some proceedings and orders of the High Court on applications for extension of time as well as the Notice of Appeal by the appellant seeking to challenge the decision of the High Court in DC Criminal Appeal No. 181 of 2014. In addition, the appellant availed us with an order of the High Court in the said Criminal Appeal No. 181 of 2014; the subject of this appeal, which shows that the appellant's appeal was dismissed on 16.09.2015, save for the sentence of life imprisonment which was quashed and set aside and, in lieu thereof, a prison term of thirty years imposed. The charge sheet and the proceedings in the High Court in the appeal

together with its judgment were completely missing. We adjourned the hearing of the appeal for some days with a view to exhausting the efforts to trace the charge sheet, the proceedings and judgment of the High Court. However, as bad luck would have it, the efforts, again, were barren of fruits.

Upon a tripartite dialogue for some considerable time between the appellant, the respondent Republic and the Court on 06.12.2019, it became apparent that the interests of justice would be served better if the appeal proceeded to hearing on the available reconstructed record. We sturdily thought that course of action will meet the justice of the case because, **first**, the complaints in the memorandum of appeal are largely on the trial court, **two**, the available record shows that the appeal was heard and determined by the High Court whose verdict was that the conviction was upheld and the sentence reduced to thirty years, **three**, the details of the charge sheet were well summarized in the judgment of the trial court, and **four**, the efforts to trace the missing record have failed and there is no hope of tracing it.

Likewise, the Court was minded to proceed with the hearing of the appeal on the available record bearing in mind that the said

available record sufficed to resolve the matters of controversy in the appeal. We were fortified on this stance by the decision we made in **The Director of Public Prosecutions v. Jackson Sifael Mtares & Three Others**, Criminal Appeal No.2 of 2018 (unreported) in our ruling of 19.06.2018 wherein we were persuaded by the decision of the Ghanaian Supreme Court in **John Bonuah @ Eric Annor Blay v. Republic** [2015] GHASC 10 in which, on the effect of an appeal whose record is incomplete, it was observed:

> *"The Cardinal Principle is that the law does not demand a hundred percent perfect record of proceedings/but such adequate record that can answer to the issues raised on appeal. Adequacy of the record test is therefore a question determinable on the facts, by reference to the grounds of appeal; weighed against the available record or alternatively the lost or destroyed record."*

It was on the basis of the foregoing that we found it judicious to proceed with the hearing of the appeal on the available record. We did so having satisfied ourselves to the hilt that it will be in the interests of justice so to do.

The material background facts to the present appeal as they can be gleaned from the prosecution witnesses are fairly straightforward and not difficult to comprehend. They go thus: the complainant Peter Abel (PW3), a resident of Runzewe in Bukombe District, then Shinyanga (now Geita) Region, who operated a bicycle for hire (commonly known in the locality as *daladala* in Kiswahili) was hired by the appellant to take him to Shilabela Village to see his aunt. They went past the *shamba* of Sizya Petro (PW2) at Kanembwa Village. PW2, while on his way to weed his *shamba* at about 11:00 hours, met the complainant (PW3) riding a bicycle aboard which the appellant was a passenger. The trio greeted each other and the duo proceeded with their trip to Shilabela Village, leaving behind PW2 who also proceeded to his *shamba*.

It happened that the appellant did not find his aunt there. He thus asked PW3 that they should go back to Runzewe. On their way back, apparently at Kanembwa Village near the *shamba* of PW2, the appellant attacked PW3 with a machete, amputating his left arm in the process, and grabbed PW3's bicycle and ran away with it. As good luck would have it, PW2 overhead PW3 crying for help. He went there

in time only to see the appellant running away with the bicycle and holding a machete on the one hand. PW3 was lying there with an amputated left arm bleeding profusely. He was later taken to Ushirombo Hospital for medical treatment.

The appellant was arrested on 22.04.2007 at a *pombe* shop after being recognized by PW3 when on his way home from the Hospital and the charge the subject of this appeal preferred against him. In his defence, the appellant completely denied the charges levelled against him and relied on the defence of alibi claiming that on the date of the commission of the offence, he was working in Hungeni Forest together with his colleagues he named as Kiswemo Sungwa, Kihwibu Matepa, Kabika Mhangwa and Amos Kisanza and returned to the village on 16.04.2007.

The appellant was arraigned as shown at the beginning of this judgment and underwent a full trial in which the prosecution lined up three witnesses who testified against him. The appellant testified in his own defence. He did not bring any other witness to support his case. At the end of the day, he was found guilty, convicted and sentenced in the manner referred to above. As already said, his first

appeal to the High Court was barren of fruits. His second appeal to the Court is pegged on seven grounds of complaint which, for reference, we reproduce them hereunder:

1. *That, the substance of the charge was not put to the appellant by the trial court and his plea recorded immediately before the first witness for the prosecution started to testify, thus not called upon to plead, and that the first appellate court did not correct the irregularity;*

2. *That, the use of the word **"him"** in the particulars of the offence in the charge sheet is not suggestive of the person to whom the use of force (weapon) was directed to in order to obtain and/or retain the stolen property, and it was used in total contravention of the requirement of **paragraph 8 of the Second Schedule to the CPA Cap 20**;*

3. *That, the appellant was not positively identified because of the following shortcomings;*
   *(i) The circumstance obtaining at the scene of crime and its precincts did not favour **unimpeded observation** of the appellant by PW2;*
   *(ii) Both **PW2** and **PW3** did not describe the appellant in terms of the appearance and/or attire put on at the material time; and*
   *(iii) It was not described how long **PW2** had the appellant under observation.*

Whose shortcomings are marring the case for the prosecution with doubts;

4. *That, the trial court did not make observation whether the victim (PW3) at the time he testified in court, had his left hand amputated as alleged, and that the first appellate court did not revisit the evidence on that aspect;*
5. *That, the defence of the appellant* ***(alibi)*** *was lightly discarded and not adequately considered by the two courts below;*
6. *That, there is not cogent evidence to establish that the appellant was arrested because of* ***recognition*** *by the victim (PW3) since the alleged militia who arrested the appellant was not summoned to testify to that effect, thus, no connection between how the appellant was arrested and the commissioning of the offence; and*
7. *That, the trial court did not specify the section of law under which the appellant was convicted and the first appellate court did not correct the irregularity."*

The appeal was argued before us on 06.12.2019 during which the appellant appeared in person, unrepresented. The respondent Republic appeared through Mr. Tumaini Pius, learned State Attorney.

When we gave the floor to the appellant to argue his appeal, he opted to adopt the grounds in the Memorandum of Appeal reproduced

above without more. He asked Mr. Pius to respond to the grounds of appeal and, need arising, reserved his right of rejoinder.

Responding, Mr. Pius expressed his stance at the very outset of his submissions that he supported the appellant's conviction and sentence meted out to him by the first appellate court.

On the first ground of appeal which is a complaint to the effect that the charge was not read out to the appellant before the first witness for the prosecution testified, Mr. Pius submitted that the complaint by the appellant is not supported by the record of appeal. He clarified that the record bears out that the appellant pleaded to the first charge at p. 14 and the substituted charge, at p. 15 was also read out to him to which he also pleaded. The first ground of appeal, he submitted was without merit and ought to be dismissed.

With regard to the second ground of appeal which is a complaint to the effect that the use of the term "him" in the particulars of the offence in the charge sheet is not suggestive of the person to whom the threat was directed, the learned State Attorney dismissed the complaint as baseless in that, despite the fact that the charge sheet is missing, the particulars thereof reproduced in the judgment of the trial

court show that the name of the complainant Peter Abel was mentioned in the beginning part of the particulars of the offence and thus the "him" in the last part thereof made reference to the said Peter Abel. The complaint in the second ground of appeal had not basis, he submitted.

The third and sixth grounds are interrelated as they centre on the evidence of identification and recognition of the appellant. On these grounds, Mr. Pius argued that the complainant Peter Abel testified on how he was hired by the appellant from Runzewe to Shilabela village to the latter's aunt. They did not find the aunt and on their way back, they used the same route and somewhere around the *shamba* of PW2, the appellant hacked PW3 with a machete and robbed him the bicycle. Also that PW2 saw the duo when going to Shilabela and on their way back and heard the appellant crying *"nakufa, nakufa"*. PW2 went thither only to find PW3 lying on the ground in a pool of blood with an amputated left arm while the appellant, armed with a machete, was running away with the bicycle. Efforts to run after him and arrest him were futilized by the fact that the appellant rode the bike and PW2 had no weapon to confront him.

PW3 told PW2 that the one who injured him was the one he carried on his bicycle. PW3 later identified the appellant at a *pombe* shop which led to his arrest. It was the learned counsel's submission that the appellant was properly identified and recognised by PW2 and PW3. He prayed for the dismissal of the third and sixth grounds of appeal for want of substance.

With regard to the fourth ground of appeal which is a complaint that the trial court did not make any observation to the effect that PW3's arm was amputated, Mr. Pius argued that the same was proved by the PF3. On being prompted that the PF3 was never tendered in evidence but only produced by the complainant (PW3) for identification, the learned counsel for the respondent Republic agreed but submitted that the piece of evidence was amply proved orally by PW2 and PW3 and, after all, he submitted, whether or not the arm was amputated was not material, what was important in the charge of armed robbery was the use of threat to rob and retain the bicycle. The fourth ground was without merit, he submitted, and implored us to dismiss it.

The fifth ground is a complaint that the appellant's alibi was not considered. Mr. Pius submitted that the record shows at p. 47 that the trial court considered the alibi but disregarded it. After all, Mr. Pius argued, the appellant did not give any notice that he will depend on alibi as the law requires. The complaint on this ground had no basis, he submitted, and implored us to dismiss it.

The last ground is a complaint by the appellant that the trial court did not state the section under which he was convicted. Mr. Pius submitted that the record at p. 47 shows that the appellant was convicted under section 287A of the Penal Code. That, he submitted, complied to the letter with the provisions of section 312 (2) of the Criminal Procedure Act, Cap. 20 of the Revised Edition, 2002 (hereinafter referred to the CPA). The learned State Attorney urged us to dismiss this ground as well and in sum he beseeched us to dismiss the appeal in its entirety

In rejoinder, the appellant submitted generally that there was no proper identification at the *locus in quo*. That the amputated arm was not shown in court. That when PW3 testified at the trial, his arm was

not amputated. The appellant also complained that the trial court refused to call his witnesses to come and prove his alibi.

We shall dispose of the ground of appeal in the style employed by the learned State Attorney.

The first ground of complaint is that the charge was not read to the appellant and that his plea was not recorded immediately before the first witness for the prosecution started to testify. We do not think this ground will detain us, for the complaint is either not supported by the record or simply misconceived. As rightly submitted by Mr. Pius, it is apparent on the record of appeal at p. 15 that on 04.09.2007, the prosecution substituted the charge with leave of the trial court. The new charge, so the record bears out, was read over and explained to the appellant who is recorded as pleading: "siyo kweli" and the trial court entered it as a plea of not guilty to the charge. The case then underwent a series of adjournments and a Preliminary Hearing conducted on 07.11.2007 before hearing commenced in earnest on 03.01.2008. Admittedly, no plea was taken after the one taken on 04.09.2007 and when the matter was called on for hearing on 03.01.2008, the prosecution told the court that it had three witnesses

to field and the appellant is recorded as saying: "I am ready [to proceed with the hearing]". We are of the view that the initial plea taken by the appellant after the charge was substituted was enough. Admittedly, in criminal proceedings, if no plea is taken after a charge is substituted, the proceedings are vitiated; the whole trial is rendered a nullity – see: **Thuway Akonaay v. Republic** [1987] TLR 92. In the case at hand, as the appellant was called upon to enter a plea on the substituted charge on 04.09.2007, we find no prejudice or miscarriage of justice occasioned for failure to take one immediately before the first witness for the prosecution testified. The trial court was not legally obligated to read over the charge again before commencement of the trial. If the appellant wished to be reminded of the charge, he would have said so when he said he was ready to go into the hearing of the case. As there was no legal duty to read again the charge to the appellant and as there was no injustice occasioned, we see nowhere to cast a blame on the trial court. This ground has no merit.

Next for consideration is the second ground of appeal which is to the effect that the use of the word "him" in the particulars of the

offence part of the charge sheet is not suggestive of the person to whom the use of force (weapon) was directed in order to obtain and/or retain the stolen property. We, again, do not think the complaint is backed up by the record. Admittedly, the charge sheet is one of the missing documents pointed out above. However, its contents have been meticulously reproduced by the learned trial magistrate in the very first paragraph of his judgment as follows:

> *"... Kubezya s/o John stands charged with the offence of Armed Robbery c/s 287A of the Penal Code CAP 16 of the laws. The prosecution side has alleged that on or about 10th April, 2007 at about 12:00 hours at Shilabela Village within Bukombe District in Shinyanga Region, the accused* ***stole one (1) bicycle the property of one Peter Abel*** *and at or immediately before or immediately after the time of stealing it* ***he used a "Panga" (Machete/bush knife) to cut him*** *on the left hand arm in order to obtain or retain the thing ...."*

In the above excerpt, the charge sheet is quoted as charging the appellant under the provisions of section 287A of the Penal Code and,

in the particulars thereof, the complainant is shown to be one Peter Abel and that immediately before, during or after the robbery, the machete was used to threaten "him". As rightly argued by Mr. Pius, the term "him" in the last part of the particulars of the offence referred to Peter Abel referred to in the first portion of the particulars of the offence. We find very cheap to buy the appellant's argument to the effect that one may not know to whom the threat was directed. To the contrary, in our considered view, the particulars of the offence are quite elaborate that the threat was directed to none other than Peter Abel, the complainant.

Even if we were to agree with the appellant, just for the sake of arguments, the evidence establishes with sufficient clarity that the threat was directed to Peter Abel. Thus even if we agree with him that the "him" in the last part of the particulars of the offence of the charge sheet did not necessarily refer to Peter Abel; the name which appears in the first part of the particulars of the offence part of the charge sheet, still we would rely on the testimony of PW2 and PW3 to observe that it did. We find solace on this stance in the decision of the Court in **Jamali Ally Salum v. Republic**, Criminal Appeal No. 52

of 2017 (unreported), wherein faced with a somewhat similar situation, the Court stated that where a certain fact does not come out clearly in the charge sheet, the same can be deduced from the testimony of witnesses. That ailment is curable under the provisions of section 388 (1) of the CPA.

The foregoing takes care of the appellant's complaint in the second ground of appeal. It is our firm view that the "him" complained of made reference to Peter Abel (PW3); the complainant. That is clear from the contents of the charge sheet as reproduced in the judgment of the trial court as well as from the testimony of witnesses; more especially PW2 and PW3. We find the second ground of appeal without merit and dismiss it.

The third and sixth grounds are intertwined; they will be disposed of together. In these two grounds, the appellant complains, **first**, that the appellant was not positively identified because the circumstances obtaining at the scene of crime and its precincts did not favour unimpeded observation of the appellant by PW2 and that both PW2 and PW3 did not describe the appellant in terms of the appearance and/or attire put on at the material time; and that it was

not described how long PW2 had the appellant under observation. **Secondly**, the appellant complains that there is no cogent evidence to establish that the appellant was arrested because of recognition by the victim (PW3) since the alleged militiaman who arrested the appellant was not summoned to testify to that effect.

We start with the evidence on identification. The appellant complains that the material conditions obtaining at the scene of crime did not favour proper identification. We do not agree. It is in the testimony of PW2 that he met the appellant and PW3 at around 11:00 hours and later, at around noon, he heard PW3 yowling for help. When he went there with a view to seeing what was amiss, he saw the appellant running away with a bicycle and holding a machete in his right hand. He tried to chase him to no avail. PW3 was lying on the ground with his left arm oozing of blood profusely, it was amputated. PW3 told PW2, that the passenger he carried on his bicycle was the one who injured him and made away with the bicycle. PW2 claims to have recognized the appellant at a distance of about fifteen metres away. He also testified that he saw both of them about one hour back and that the appellant was well known to him as he

used to see him at Kabuhima and Kanembwa Centres many times. We thus do not agree with the appellant's argument that the material conditions at the scene of crime were such that the appellant could not be easily identified or recognized.

With regard to the complaint that the complainant did not recognize him because the militiaman who arrested him was not called to testify, we think the complaint has no justification. We have examined the testimony of PW3 and we see him as a witness of truth. He testified that he saw the appellant at the *pombe* shop and reported the matter to the militiaman who arrested and took him to the police station. We are positive that the complainant rightly recognized the appellant at the *pombe* shop which led to his arrest. That evidence alone by PW3 was enough to prove that fact even without the militiaman not being called to testify. It is elementary that under the provisions of section 143 of the Evidence Act, Cap. 6 of the Revised Edition, 2002, no particular number of witnesses is required for the proof of any fact.

Admittedly, PW2 and PW3 did not testify on the attire and appearance of the appellant and the exact time PW2 had him under

observation. However, in view of the overwhelming evidence by PW3 who was together with the appellant for hours, supported by the testimony of PW2 who knew the appellant before and saw them twice at an interval of about one hour on the material day, we do not think the omission to testify on the attire of the appellant or the exact time PW2 had him under observation on the material day watered down their testimony. The third and sixth ground have no merits. They are both dismissed.

The fourth ground is about a complaint by the appellant to the effect that the trial court did not make any observation on whether the complainant (PW3) at the time he testified in court, had his left arm amputated as alleged and that the first appellate court did not revisit the evidence on that aspect. This ground will not detain us. We state at the very outset, as did Mr. Pius, that this appeal emanates from a charge of armed robbery in which proof of amputation was not one of the ingredients. What was important was the use of threat by using a weapon (in this case the machete) in order to obtain or retain the robbed property. This ground has no merit. We dismiss it.

We now turn to consider the fifth ground of appeal. This is a complaint by the appellant to the effect that his alibi "was lightly discarded and not adequately considered by the two courts below". Against this ground, the learned State Attorney attacked the contention that the alibi was not considered with an argument that the appellant did not give any notice thereof but, all the same, the trial court considered his alibi at p. 47 of the record of appeal and discarded it. It is, we think, important to note that it is the requirement of section 194 (4) of the CPA that an accused person who intends to rely on alibi in his defence must give prior notice to that effect. We will let the subsection speak for itself:

> *"Where an accused person intends to rely upon an alibi in his defence, he shall give to the court and the prosecution notice of his intention to rely on such defence before the hearing of the case".*

But together with the above requirement under subsection (4) of section 194 of the CPA, the law took cognizance of the fact that some accused persons would bring about the defence of alibi belatedly; without issuing prior notice thereof. Subsection (5) of section 194 of

the CPA was enacted to take care of such eventualities. This subsection requires such an accused person to furnish the prosecution with the particulars of the alibi at any time before the case for the prosecution is closed. The subsection provides:

> *"Where an accused person does not give notice of his intention to rely on the defence of alibi before the hearing of the case, he shall furnish the prosecution with the particulars of the alibi at any time before the case for the prosecution is closed".*

And subsection (6) is intended to take care of situations where an accused person relying on an alibi in defence does not issue prior notice before the hearing in terms of subsection (4) of section 194 of the CPA, nor does he furnish the prosecution with the particulars of the alibi at any time before the case for the prosecution is closed in terms of subsection (5) of the same section. This subsection provides:

> *"If the accused raises a defence of alibi without having first furnished the prosecution pursuant to this section, the court may in its discretion, accord no weight of any kind to the defence".*

The appellant in the present case is covered by the last scenario; he did not give any notice of alibi as required by the provisions of section 194 (4) of the CPA. Neither did he furnish the prosecution with the particulars of the same before the case for the prosecution was closed in terms of subsection (5) of the section 194 of the CPA. But subsection (6) of this provision gives the court discretion to accord no weight to such a defence if it so wishes. It was therefore the duty of the trial court to see whether or not, in its discretion, it should accord no weight to the defence of alibi by the appellant or not. What happened in the case at hand is that it found it prudent to, and indeed, considered the alibi and discarded it.

We wish to interject here that we are alive to the position of the law that an accused person is under no legal duty to prove his innocence. But in situations where, like here, the accused person is depending on the defence of alibi, it is his duty to demonstrate his alibi albeit on a balance of probabilities. We are fortified in this view by the decision of the High Court in **Masudi Amlima v. Republic** [1989] TLR 25 in which (we quote from the second headnote) it was held:

> *"The appellant's defence of alibi was properly rejected. He did not give the notice required under section 194(4) of the Criminal Procedure Act, 1985,* ***and he did not call the person he claimed was with him at the time of the commission of the offence".***
> [Emphasis supplied].

We subscribe to the above position taken by the High Court as depicting the correct position of the law in this jurisdiction.

We have given due consideration to the accused person's alibi as raised. We see no plausible reason why it was not raised at the very outset; at the time of arrest on 22.04.2007. Neither do we see any reason why it was not raised at the hearing before the prosecution case closed its case. The appellant did not give the requisite notice as prescribed by section 194 (4) of the CPA and did not call any person they were with at the material time. For the avoidance of doubt, we find the appellant's complaint that the trial court refused him to call his witnesses as a pack of lies, for he is recorded at p. 33 of the record of appeal that efforts to trace his witnesses proved futile and therefore opted to fend for himself on oath. The defence of alibi just surfaced in

defence. However, lucky he was, his alibi was considered by the trial court but discarded. We think the appellant's alibi was rightly rejected. On this conclusion, we wish to associate ourselves with the decision of the Supreme Court of Uganda in **Kibale v. Uganda** [1999] 1 EA 148 in which it was held:

> *"A genuine alibi is, of course, expected to be revealed to the police investigating the case or to the prosecution before trial. Only when it is so done can the police or the prosecution have the opportunity to verify the alibi. An alibi set up for the first time at the trial of the accused is more likely to be an afterthought than genuine one."*

We subscribe to the above decision. We think the appellant's alibi was, in the light of the above discussion, more likely an afterthought than a genuine one. And, as an extension to the above arguments, the appellant was adequately identified at the *locus in quo* by PW2 and PW3. That fact; that is, the fact that the appellant was identified at the *locus in quo* diminishes his alibi - see **Abdallah Mussa Mollel @ Banjoo v. the Director of Public Prosecutions**,

Criminal Appeal No. 31 of 2008 an unreported decision of the Court. The fifth ground of appeal also fails.

The seventh and last ground is a complaint by the appellant that the trial court did not specify the section of law under which the appellant was convicted and that the first appellate court did not correct the irregularity. This complaint is, with respect, also unfounded. The record at p. 47 shows crystal clearly that the appellant was found guilty under the provision he was charged with and convicted accordingly. The trial court recorded:

> *"I accordingly find that the said Kubezya s/o John is guilty of the offence of Armed Robbery c/s 287A of the Penal Code (Cap. 16 RE 2002) and I duly convict him forthwith."*

Thereafter the trial court awarded the appellant a sentence of life in prison which was reduced by the first appellate court to one of thirty years in prison. As rightly submitted by the learned State Attorney, the way the trial court sentenced the appellant was in line with the dictates of section 312 (2) of the CPA which states that in the case of conviction of an accused person the judgment shall specify the offence of which, and the section of the Penal Code or other law under

which, the accused person is convicted and the punishment to which he is sentenced. The trial court therefore acted within the legal limits and the first appellate court had nothing to rectify, save for the sentence. The seventh ground is without merit as well.

It is apparent from the above discussion that all the grounds of appeal fronted by the appellant have failed for want of merits. In the end result, this appeal also fails. It stands dismissed entirely.

Order accordingly.

DATED at **TABORA** this 12th day of December, 2019.

S. A. LILA
JUSTICE OF APPEAL

J. C. M. MWAMBEGELE
JUSTICE OF APPEAL

F. L. K. WAMBALI
JUSTICE OF APPEAL

The Judgment delivered this 12th day of December, 2019 in the presence of the appellant in person unrepresented and Mr. Tumaini Pius, learned State Attorney for the respondent/Republic, is hereby certified as a true copy of the original.

E. G. MRANGU
DEPUTY REGISTRAR
COURT OF APPEAL