IN THE COURT OF APPEAL OF TANZANIA

AT TABORA

(CORAM: MKUYE, J.A., LEVIRA, J.A. And GALEBA, J.A.)

CRIMINAL APPEAL NO. 240 OF 2020

MILEMBE DOTTO..... 1ST APPELLANT

AMOS MADELEKE ..... 2ND APPELLANT

SOSTENES BUJIKU ..... 3RD APPELLANT

GODFREY MUSA ..... 4TH APPELLANT

SHILA MACHIBYA ..... 5TH APPELLANT

VERSUS

THE REPUBLIC ..... RESPONDENT

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

(Bongole, J.)

dated the 15th day of May, 2020

in

Criminal Sessions Case No. 65 of 2019

.....

JUDGMENT OF THE COURT

19th September & 4th October, 2023

LEVIRA, JA.:

The appellants were aggrieved by the decision of the High Court of Tanzania at Tabora (the trial court) in Criminal Sessions Case No. 65 of 2019, which decision led to their convictions and death sentences on murder charge contrary to section 196 of the Penal Code

[Cap 16 R.E. 2002 now R.E. 2022]. As a result, they have preferred the present appeal.

It was alleged before the trial court that, on 8th April, 2013 during night hours at Ng'wande Matongo Village, Ichemba Ward, Ulyankulu Division within Kaliua District in Tabora Region, the appellants murdered one Jenifa Kafipa. The prosecution summoned twelve witnesses to testify. Kija Fumbuka (PW1) who was the husband of the deceased identified the deceased by another name as Genovefa Petro @ Jenifa. He associated the death of his wife with wounds which she sustained after being invaded by bandits at their home at around 19:30 hours. PW1 was in the bathroom and his wife was just around home when the bandits arrived at the scene of crime. He suddenly saw someone lightening a torch and he was ordered to sit down. The invaders demanded money from PW1, which was given, but could not leave from the scene until when they had slaughtered his wife (the deceased). Having left, PW1 went to his parents to inform them about the incident. They raised alarm and several people responded. Search was conducted and the body of the deceased was found lying on the field in the neighborhood. PW1 identified the bandits (2nd, 4th and 5th

appellants) by their faces as he said, there was solar and moonlight. He as well identified them at Ulyankulu Police Station during identification parade. Malosha Mwanzalima (PW7), then Acting Ward Executive Officer of Ichemba Ward is the one who reported the incident to the police. The deceased body was examined by Dr. William Benedict Kaijage (PW4) after he received a phone call from Urambo Police Station requesting him to go to the scene of crime. PW4 saw the body of the deceased which had injuries at the neck and on the head. He prepared a postmortem examination report which was admitted as exhibit P1 during trial. No. D7414 D/SSgt Faustine (PW11) was among police officers who went to the scene of crime. He drew a sketch map of the scene of crime which was admitted as exhibit P5.

During investigation, it transpired that the 1st appellant who was the divorcee of PW1, was behind the murder. According to Juma Raphael Maganga (PW2) the 1st appellant was arrested on 14th April, 2013 by militiamen (Sungusungu). Following her arrest, the 2nd appellant was also arrested on 15th April, 2013 and admitted to have participated in killing the deceased before the Village Executive

Officer, one Joseph Kubabu (PW5). He also mentioned the 1st, 3rd and 4th appellants to be the people who were involved in killing the deceased.

On 20th April, 2013, SSP Issack Mathias Mushi (PW10) conducted an identification parade at Ulyankulu Police Station and the 2nd appellant was identified by PW1 and Shija Pascal (PW3) to be among the bandits. Another identification parade was conducted by PW10 and the 5th appellant was as well identified by PW1 and PW3. The 3rd and 4th appellants were identified by PW1 and PW3 through the identification parade conducted on 15th May, 2013. The identification parade registers were admitted in evidence as exhibits P2, P3 and P4 respectively. PW11 recorded cautioned statements of the 3rd and 4th appellants (exhibits P6 and P7 respectively) in which they admitted to have committed the charged offence. Apart from that, they also recorded their extra judicial statements (exhibits P8 and P9, respectively).

The appellants defended themselves by denying to have been involved in killing the deceased. The 1st appellant (DW1) confirmed the date of her arrest as stated by prosecution witness. However, she

denied to have been either involved in killing the deceased or knowing her. Likewise, the 2nd appellant (DW2) and each of the rest of the appellants (DW3, DW4 and DW5) distanced themselves from commission of the offence.

Having heard the parties' evidence, the trial Judge found all the appellants guilty as charged. Therefore, he convicted them of murder and sentenced each of them to suffer death by hanging as intimated above. The appellants were not satisfied with the decision of the trial court. Therefore, they have come before us armed with eight grounds of appeal appearing in their joint supplementary memorandum of appeal. We take liberty to reproduce them below as follows:

1. *That, the Hon. trial Judge erred in law and facts by failing to have considered material discrepancies and contradictions in the charge and evidence by the prosecution side in respect of the name of the deceased person.*
2. *That, the trial Judge erred in law and fact in failure to properly address the testimonies of witness in respect of the 5th Appellant's name as appearing on exhibits P6, P7, P8 and P9.*

3. *That, owing to the evidence on record, the learned trial Judge erred in law and fact in convicting the appellants on account that the 2nd, 3rd and 4th appellants were identified.*

4. *That, the learned trial Judge erred in law and fact for failure to comply with the requirement of section 130 (3) of the Evidence Act Cap 6 R.E. 2022 the omission which renders the evidence of PW1 inadmissible.*

5. *That, the learned trial Judge erred in law and fact in convicting the 3rd and 4th appellants basing on cautioned statements Exh. P6, P7 and P9 which were taken contrary to section 50 (1) (a), Section 51 and Section 57 (2) (e); (3) (i-ii), Section 57 (4) (a) (b) of the Criminal Procedure Act, Cap 20 R.E. 2022.*

6. *That, the prosecution witnesses were not credible.*

7. *That, the trial Judge erred in law and fact in convicting the appellants basing on repudiated and retracted cautioned statements.*

8. *That, on the basis of discrepancies in evidence, the trial Judge erred in law and fact in holding that the case for prosecution was proved beyond reasonable doubt.*

At the hearing of the appeal, the appellants were represented by Mr. Kanani Aloyce Chombala, learned advocate whereas, the respondent Republic had the services of Mr. Winlucky Mangowi and

Ms. Veronica Moshi, both learned State Attorneys. It is important to note that, initially, each appellant had filed his own memorandum of appeal containing more than eight grounds of appeal; except, the first appellant who had five grounds of appeal in her memorandum of appeal. Mr. Chombala preferred to argue the grounds of appeal in the following order; third, fifth and seventh grounds together, first and second grounds together, then the sixth ground and finally, the eighth ground. He abandoned the fourth ground of appeal in the course of his submission.

Regarding the third ground of appeal, Mr. Chombala challenged identification of the 2nd, 3rd and 4th appellants at the scene of crime and during identification parade by PW1 and PW3. He argued that the evidence of PW1 on identification of bandits was not reliable and the learned trial Judge ought not to have relied on it to ground the appellants' convictions. He referred us to pages 32 to 35 of the record of appeal where PW1 testified that, while in the bathroom he saw someone coming with a torch and he was ordered to sit down. He thought it was his wife. Since it was in the night, the learned advocate

argued that, PW1 did not see who was coming towards him and that is why he thought it was his wife.

Mr. Chombala argued further that, at page 34 of the record of appeal PW1 testified that, he identified the faces of the invaders as there was solar and moonlight and later at the police station without stating the intensity of the light. He added that, although PW1 stated that he identified the bandits, at page 35 of the record of appeal he said, he never gave their descriptions to the police and other people who responded to the alarm at the scene of crime. Mr. Chombala wondered how then would the police arrange the identification parade which eventually led to the identification of those appellants?

Apart from that, PW3 was among the identifying witnesses, as we were referred to page 45 of the record of appeal by Mr. Chombala. He also gave description of the 4th appellant in his statement (exhibit D2) as he said, he was tall, white in complexion and had a red shirt. However, at page 46 of the record of appeal he responded during cross examination that, the 4th accused is black in complexion. Mr. Chombala was surprised that the learned trial Judge resolved the issue of 4th appellant's appearance in his judgment by stating at page 227 of

the record of appeal that, his complexion changed from white to black due to hardship of staying in prison for sometimes.

Mr. Chombala argued further that, although the identification parade was arranged by PW10, when he was cross examined by the counsel for the appellants as to whether the identifying witnesses gave description of the bandits before the parade, he responded that witnesses had no duty of describing the bandits before identification parade, as it can be seen at page 75 of the record of appeal. Therefore, he firmly argued that the identification by PW1 and PW3 was weak in the following manner: **First,** they did not give description of the bandits to the first person(s) they met. **Second,** they did not give description of the bandits to the police before the identification parade; and **third,** the intensity of light which enabled them to identify the bandits was not explained. He fortified his arguments by citing the following decisions of the Court namely, **Mohamed Hamis @ Bilali v. Republic**, Criminal Appeal No. 300 of 2021; **Hekima Madawa Mbunda and Onesmo Kumburu v. Republic,** Criminal Appeal No. 566 (both unreported) and **Waziri Amani v. Republic,** [1980] TLR 250. Mr. Chombala, thus, urged us to find that the

identification of the 2nd, 3rd and 4th appellants was weak. As a result, it was not proper for the learned trial Judge to conclude that they were properly identified at the scene of crime and during the identification parades.

In reply, Mr. Mangowi prefaced his submission by supporting the appeal on ground that there were material discrepancies on prosecution case. He said, basically, the conviction of the appellants was based on two major considerations. **First,** identification of the 2nd, 4th and 5th appellants; and **second,** confessions of the 3rd and 4th appellants, exhibits P6, P7 and P9 (extra judicial statement of the 3rd appellant) although both of them had shortcomings.

Regarding identification of the 2nd, 4th and 5th appellants, he submitted that PW1 who identified them did not know them before the incident but he identified their faces as shown at page 34 of the record of appeal. According to Mr. Mangowi, this identification was not sufficient because PW1 only stated that there was moonlight and solar. He did not explain the intensity of its brightness. He added, although PW1 stated that he identified those appellants by faces, he did not give any description of how they looked like even to the police

where the incident was reported. Failure to give description of the bandits weakened the prosecution case, he submitted. Mr. Mangowi submitted further that, likewise, the identification parades which were conducted to identify the appellants had procedural irregularities which created doubt as to whether those people were, indeed, identified at the scene of crime.

We have carefully considered submissions by the counsel for the parties and the record of appeal in respect of the identification of the appellants, particularly, the 3rd, 4th and 5th at the scene of crime and during identification parades. Basically, the identifying witnesses were PW1 and PW3 as submitted above. It is not in dispute that those witnesses did not know the appellants before the incident, except the 4th appellant whom PW3 claimed to have known before the incident. Therefore, it was the identification by a stranger which required description of the culprits to have been provided to the police so as to assist them to conduct identification parades; but that was not the case. In **Frank Christopher @ Mallya v. Republic**, Criminal Appeal No. 182 of 2017 (unreported), the Court stated that:

> *"It is trite law that in order to act on the evidence of identification of a stranger, the*

witness must have given first, the description of that person."

As regards the identification parade arranged for PW3 to identify the 4th appellant whom she claimed to have known before the incident, we think, it was unnecessary - See: **Karim Seif Slim v. Republic**, Criminal Appeal No. 161 of 2017 (unreported). However, it is still doubtful whether indeed she identified him at the scene of crime because she did not state the source and brightness of the light which enabled her to identify to him.

Regarding visual identification by PW1, we agree with the submissions by the counsel for the parties that it was weak. He only stated the source of light to be moonlight and solar without explaining the intensity of its brightness which is among the key factors in visual identification – See: **Waziri Amani v. Republic** [1980] T.L.R. 250; **Raymond Francis v. Republic** [1990] T.L.R. 100 and **Idd Omari Mbezi and 3 Others v. Republic**, Criminal Appeal No. 227 of 2009 (unreported).

We are settled in our mind that identification of the 2nd, 3rd and 4th appellants, both at the scene of crime and during identification parade, was weak as all the possibilities of mistaken identity were not

eliminated. Equally, we are unable to go along with the reasoning of the learned trial Judge that the complexion of the 4th appellant changed from white to black because of staying in remand prison for almost eight years. We take the identification evidence of PW3 as alluded to above, to be uncertain of the person whom she claimed to have seen before the incident and during identification parade. In totality, we find that the purported identification of the 2nd, 3rd and 4th appellants by PW1 and PW3 was weak to the extent that, it could not be acted upon by the trial court to ground the appellants' convictions. The third ground of appeal is therefore, merited.

Submitting in respect of the fifth, seventh and eighth grounds of appeal, Mr. Chombala argued that, it was wrong for the trial Judge to rely on exhibits P6, P7 and P9 (statement) to ground convictions of the 3rd and 4th appellants because these exhibits were recorded contrary to the requirements of sections 50 (1) (a), 51 and 57 (2) (e), (3) (i-ii), (4) (a) (b) of the Criminal Procedure Act, Cap 20 [R.E. 2002 now R.E. 2022] (the CPA). According to him, those exhibits were not recorded within four hours of their arrest as per the requirement of section 50 (1) (a) of the CPA, and there is nothing on the record

indicating that extension of time was sought and obtained to justify recording out of time in terms of section 51 of the CPA. Mr. Chombala went on to submit that the statement of the 3rd appellant was recorded three days after he arrived at Ulyankulu Police Station. He indicated that the 3rd appellant arrived at the Ulyankulu Police Station on 11th May, 2013 but his statement was recorded on 15th May, 2013. In addition, he said, the 4th appellant arrived at the police on 12th May, 2013 but his statement was recorded on 14th May, 2013, out of the prescribed time. It was his prayer that since exhibits P6 and P7 were recorded out of time, they should be expunged from the record.

Apart from that, he argued, the recording officer did not comply with the requirements of section 57 (2) (e) of the CPA as he did not indicate the time, he finished recording the statements. He referred us to page 177 of the record of appeal where exhibit P7 is found and claimed that time was supposed to be indicated at the end of the statement and not at the side of the page as it appears in the statement. Another complaint was that, those exhibits were not certified to meet the requirement of section 57 (4) (a) and (b) of the CPA. He insisted that since the 4th appellant was not categorical in his

statement when he stated that: "ni sahihi" (meaning is correct) then, it is not certain whether the statement was correct.

Regarding exhibit P6 (the cautioned statement of the 3rd appellant) found at page 171 of the record of appeal, Mr. Chombala argued that the words appearing in the statement "maelezo haya yote nimeyasoma ni sahihi kama nilivyoyaeleza" (meaning, I have read the whole statement, it is correct as I explained) is not certification because section 57 (3) of the CPA requires certification to be written at the end of the statement in a separate paragraph. It cannot be part of the answers to the questions, otherwise the statement lacks authenticity, he argued. He cited the case of **Juma Omary v. Republic**, Criminal Appeal No. 568 of 2020 (unreported) to support his argument and he urged us to expunge exhibits P6 and P7 from the record.

The appellants' complaint in the seventh ground of appeal is that, they were wrongly convicted basing on repudiated and retracted cautioned statements. Arguing on this ground, Mr. Chombala stated that such statements could not be relied upon without corroboration.

In support of his argument, he cited the case of **Kashindye Meli v. Republic** [2002] T.L.R. 374.

Submitting on the eighth ground of appeal, Mr. Chombala argued that the prosecution case was not proved beyond reasonable doubt basing on his submission on other grounds of appeal. He therefore urged us to allow the appeal and set the appellants free.

Regarding confessions of the 3rd and 4th appellants, exhibits P6, P7 and P9, Mr. Mangowi concurred with the submission by the counsel for the appellants to the extent that, admissibility of those exhibits had weaknesses. He confined his submission on the issue of time to support that, indeed, the said statements were recorded out of prescribed time by the law. He was in agreement with the submission by the counsel for the appellants that, the 3rd appellant was arrested on 9th May 2013 but his statement was recorded on 12th May, 2013. In addition, he said, the prosecution evidence regarding the arrest of the 3rd appellant was contradictory. He pointed out that, while PW11 stated at page 78 of the record of appeal that the 3rd and 4th appellants were arrested at Kahama on 9th May, 2013, one month after the incident and sent to Ulyankulu Police Station on 13th May,

2013; PW2 at page 41 of the record of appeal stated that after the arrest of the 1st appellant, she mentioned the 3rd appellant to be the one she sent to find people who could kill the deceased. Therefore, he said, it is doubtful as to when and where was the 3rd appellant arrested and taken to Ulyankulu Police Station to record his statement. He added that, it is even more doubtful whether indeed, the 3rd appellant was sent there and recorded his statement (exhibit P6) as per the testimony of PW11.

In respect of exhibit P7, the cautioned statement of the 4th appellant, Mr. Mangowi submitted that, PW11 testified that when he was about to record the statement of the 4th appellant on the day he was sent to the police, the 4th appellant told him that he was tired and could not record it on that day. He referred us to page 107 of the record of appeal where exhibit P7 is found and submitted, that there is nowhere in the said exhibit where it is indicated that the 4th appellant told PW11 that he was tired as alleged. In absence of such explanation, he said, the statement of PW11 lacks justification and it remains that the statement was recorded out of time contrary to section 50 (1) (a) of the CCPA.

Besides, he added that exhibits P8 and P9 were tendered by PW11 under section 34B of the Evidence Act while he was not the recorder. According to him, it was improper for PW11 to tender confessions which were not made before him. In addition, he submitted that PW11 was not among the witness who were listed during committal proceedings and there was no notice to add him as a witness during the trial so as to justify the applicability of section 34B of the Evidence Act. He was firm that exhibits P6, P7, P8 and P9 were admitted contrary to the law and thus they deserve to be expunged from the record of appeal.

Mr. Mangowi concluded by submitting that, this case has no direct evidence except confessions which were wrongly admitted and the three people who arrived at the scene of crime were not properly identified. Therefore, according to him, if the identification evidence is disregarded and the statements are expunged from the record, the prosecution remains with nothing as evidence to prove the charge against the appellants. In the circumstances, he supported the appeal and urged us to allow it.

This ground of appeal invites us to determine as to whether exhibits P6, P7, P8 and P9 were admitted contrary to the requirements of the law and were therefore wrongly relied upon by the trial court to convict the appellants. The complaints are pegged under, among other provisions, section 50 (1) (a) of the CPA. This section reads:

> *"50 (1) For the purpose of this Act, the period available for interviewing a person who is in restraint in respect of an offence is-*
> *(a) subject to paragraph (b), the basic period available for interviewing a person, that is to say, the period of* ***four hours commencing at the time when he was taken under restraint*** *in respect of the offence."*
> [Emphasis added]

We have perused the record of appeal, particularly page 78 where PW11 testified to the effect that, the 3rd and 4th appellants were arrested on 9th May, 2013 and they were taken to Ulyankulu Police Station on 10th May 2013 due to transport problem. He then recorded the statement of the 3rd appellant (exhibit P6) on the same day and the following day he recorded the statement of the 4th appellant (exhibit P7).

However, we examined exhibit P6 which is found from page 171 to 176 of the record of appeal and discovered that it was recorded on 13th May, 2013 and exhibit P7 found from page 177 to 183 of the record of appeal was recorded on 15th May 2013, different from what PW11 stated in his testimony. We have, as well, noted a variation of the dates on which the 3rd and 4th appellants were taken to Ulyankulu Police Station and their statements being recorded thereafter. While PW11 said it was on 10th May, 2013, the 3rd appellant said it was on 11th May, 2013 and the 4th appellant said it was on 12th May, 2013. Even if for the sake of argument, we take that they arrived at Ulyankulu Police Station on 12th May, 2013, still the prosecution offered no explanation as to why the statement of the 3rd appellant was recorded on the following day, that is, on 13th May, 2013 and that of the 4th appellant on 15th May, 2013. The bottom line is, those exhibits (P6 & P7) were recorded out of four hours prescribed by the law without any justifiable reason. Therefore, they deserve to be expunged from the record as we accordingly do - See: **Charles Nanati v. Republic**, Criminal Appeal No. 286 of 2017 (unreported).

Regarding the extra judicial statements of the 3rd and 4th appellants (exhibits P8 & P9) respectively, Mr. Mangowi argued that they are inadmissible because they were tendered by PW11 under section 34B (2) of the Evidence Act while he was not a recorder and could not prove their voluntariness. The question for our determination is whether exhibits P8 and P9 were properly admitted.

Section 34B of the Evidence Act provides:

> *"(1) In any criminal proceedings where direct oral evidence of a relevant fact would be admissible, a written or electronic statement by any person who is, or may be, a witness shall subject to the following provisions of this section, be admissible in evidence as proof of the relevant fact contained in it in lieu of direct oral evidence.*
>
> *(2) A written or electronic statement may only be admissible under this section.*
>
> *(a) Where its maker is not called as a witness, if he is dead or unfit by reason of bodily or mental condition to attend as a witness, or if he is outside Tanzania and it is not reasonably practicable to call him as witness, or if all reasonable steps have been taken to procure*

his attendance but he cannot be found or he cannot attend because he is not identifiable or by operation of any law he cannot attend.

(b) If the statement is, or purports to be, signed by the person who made it.

(c) If it contains a declaration by the person making it to the effect that it is true to the best of his knowledge and belief and that he made the statement knowing that if it were tendered in evidence, he would be liable to prosecutions for perjury if he willfully stated in it anything which he knew to be false or did not believe to be true;

(d) If, before the hearing at which the statement is to be tendered in evidence, a copy of the statement is served, by or on behalf of the party proposing to tender it, on each of the other parties to the proceedings;

(e) If none of the other parties, within ten days from the service of the copy of the statement, serves a notice on the party proposing or objecting to the statement being so tendered in evidence."

At page 94 of the record of appeal PW11 before tendering exhibits, he testified that, he was the one who sent the 4th appellant to the justice of peace. We wish to reproduce part of his evidence:

> *"I decided to take the 4th accused to a justice of peace on 15/05/2013. The said magistrate was Alex Kivanda who is now deceased.*
> *I can recall the extra judicial statement if I see it. I know his hand writing and also the name of the suspect who was sent to Honourable Kivanda. I am the one who sent him to the magistrate.*
> ***Mr. Rwegasira:***
> *My Lord, I pray "PW11" be allowed to tender the extra judicial statement under section 34(B) (a) (b) of the Evidence Act, Cap 6 R.E. 2002. We have filed a notice to that effect and no objection has been lodged.*
> ***Mr. Chombala:***
> *My Lord, I have no objection.*
> ***Court:***
> *The Extra Judicial Statement of the 4th Accused admitted as Exhibit P8."*
>
> *Sgd:*
> ***JUDGE***
> ***27/04/2020***

At page 95, PW11 testified as follows:

> *"I also took Sostenes Bujiku before the justice of peace. I can recall the extra judicial statement of the 3rd accused person as I know the hand writing of the magistrate, stamp and name of the accused."*
>
> ***Mr. Rwegasira;***
>
> *My Lord, I pray the witness to be allowed to tender the Extra Judicial Statement of the 3rd accused as the Magistrate who recorded it is dead. I pray under section 34 (B) (ii) (a) (b) and (e) the statement be admitted.*
>
> ***Mr. Kanani Chombala:***
>
> *My Lord, I have no objection.*
>
> ***Court:***
>
> *The Extra Judicial Statement of the 3rd accused is admitted as Exhibit P9."*

We have observed from the above excerpt that, PW11 tendered those exhibits because the Justice of Peace who recorded them was, by that time, a deceased. As submitted by Mr. Mangowi, PW11 was not a recorder of those statements, therefore he could not just tender them as if he was the recorder. We also agree with Mr. Mangowi that PW11 was not in a position of proving the voluntariness of those statements had that need arose. Apart from that, section 34B of the

Evidence Act deals with direct oral evidence of a person who cannot be called as a witness under the above stipulated circumstances. Therefore, it could have been different had it been that PW11 first tendered the statement of the deceased (the Justice of Peace) which contains his declaration as per the requirement of section 34B (2) (c) of the Evidence Act indicating that, indeed, the statement was recorded by the deceased. We find that, it was not sufficient for PW11 to state only that he knew the hand writing of the deceased without tendering the said deceased's statement. In the circumstances, exhibits P8 and P9 were wrongly admitted in evidence under section 34B (1) and (2) of the Evidence Act. Consequently, we expunge them from the record.

Now that we have expunged exhibits P6, P7, P8 and P9 from the record, it means, there is no evidence remaining on the record to connect the appellants to the offence with which they were charged. This is sufficient to dispose of the appeal as it cannot be said that the prosecution case was proved beyond reasonable doubt. In the circumstances, we find no reason to determine other grounds of appeal.

In the upshot, we find merit in this appeal and allow it, quash convictions and the appellants' sentences. We order immediate release of the appellants from prison unless otherwise they are lawfully held.

DATED at **TABORA** this 4th day of October, 2023.

R. K. MKUYE

JUSTICE OF APPEAL

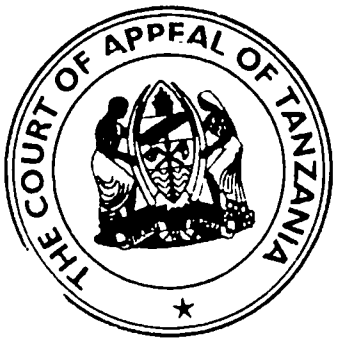
M. C. LEVIRA

JUSTICE OF APPEAL

Z. N. GALEBA

JUSTICE OF APPEAL

The Judgment delivered this 4th day of October, 2023 in the presence of both appellants in person, and Mr. Magonza Charles, State Attorney for the Respondent/Republic, is hereby certified as a true copy of the Original.



S. P. MWAISEJE

DEPUTY REGISTRAR

COURT OF APPEAL