IN THE COURT OF APPEAL OF TANZANIA

AT MOROGORO

(CORAM: JUMA, C.J., MWARIJA, J.A. And MAKUNGU, J.A.)

CRIMINAL APPEAL NO 669 OF 2021

JUSTINE HAMIS JUMA CHAMASHINE.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

(Appeal from Judgment of the High Court of Tanzania Dar es Salaam)

(Hon. Chaba, J)

dated the 10th day of November, 2021

in

High Court Criminal Session No. 27 of 2020

JUDGMENT OF THE COURT

25th April & 2nd May, 2023

JUMA, C.J.:

The appellant, JUSTIN HAMIS CHAMASHINE, was in the High Court of Tanzania at Dar es Salaam, charged with the offence of murder of JOSEPH FLORENCE @ MSIMBE (the deceased) contrary to section 196 of the Penal Code, Cap. 16. The particulars of the offence alleged that on 09/01/2017 at Kikwaraza area (Mikumi Ward) in Kilosa District of Morogoro Region, he murdered the deceased. After his trial, the High Court (Chaba, J.) convicted him and sentenced him to suffer

death by hanging. This appeal arises from that conviction and sentence.

On 13/4/2023, the appellant filed ten grounds of appeal. In essence, we paraphrase his complaints as follows;

(1) That circumstantial evidence which the learned trial Judge relied on to convict him was insufficient to prove the prosecution case beyond reasonable doubt.

(2) That the learned trial Judge erred in applying the doctrine of recent possession to convict him. There was no compelling evidence that linked him with the stolen motorcycle (exhibit P3) because the prosecution failed to prove its ownership by inviting a Tanzania Revenue Authority Officer to prove ownership.

(3) The learned trial Judge erred when he relied on the seizure certificate (exhibit P5) to convict him. This certificate contradicts the evidence of PW8, PW9, and PW10.

(4) The caution statements (exhibits P6 and P7) the trial Judge relied on were recorded illegally, contravening sections 48, 50, 51, 52, 53, and 58 of the Criminal Procedure Act, Cap. 20.

(5) That the learned trial Judge erred in relying on blood stains found on the motorcycle without proving whether they came from the body of the deceased.

(6) That the learned trial Judge erred in convicting him without evidence proving that he visited the Kikwaraza village in Mikumi.

(7) That the learned trial Judge convicted him because of the weakness of his defence.

(8) That the learned trial Judge wrongly allowed the court assessors to cross examine him on the issues favourable to the prosecution.

(9) That the prosecution evidence which the learned trial Judge relied on was based on suspicions, and there was no evidence to show him as the last person to be seen with the deceased person.

(10) That the prosecution did not prove its case beyond reasonable doubt.

Events leading to the appellant's arrest and subsequent conviction began around 01:00 hrs. in the morning of 10/01/2017. G.6409 D. Josephat (PW8), a Police Officer from the Field Force Unit at Morogoro,

was driving a Land Cruiser police vehicle patrolling the Morogoro-Iringa Highway. He saw a motorcyclist riding towards Morogoro. PW8 used the vehicle beam light to signal the motorcyclist to stop. The motorcycle did not stop.

As the motorcycle sped by, PW8 noted that its rider had no shirt but carried a small backpack. Suspecting the motorcyclist was illegally conveying bhang, PW8 alerted Frank John Chimile (PW9), a revenue collection agent of Morogoro Municipality at a roadblock ahead. Despite the barrier, the motorcyclist managed to run away. The police officers chased and caught up with him two kilometres away. They returned him to the roadblock where PW8 arrested and established his name, Justin Hamis Chamashine (the appellant).

At his arrest, the appellant possessed a black motorcycle (Registration Number MC 443 AFX), which he was riding before police caught up with him. He had a backpack that carried blue jeans trousers, a T-shirt, and a shirt. He also had a machete. PW8 prepared a seizure certificate (exhibit P5) which documented the items the police found in the apperllant's possession.

PW9 described the condition of the motorcycle. It was dusty, and had bloodstains on its fuel tank and backseat areas. There were bloodstains on the machete as well.

After completing his highway patrol duties at 05:00 hrs., PW8 took the appellant to the Morogoro Central Police Station. He opened an initial criminal case file accusing the appellant of the offence of possession of stolen properties.

E. 6058 D/SSG Seleman (PW12) testified that on 10/1/2017, the Deputy Regional Crime Officer for Morogoro, SP Abrahaman Njiku, assigned him to investigate the appellant's possession of stolen goods police found on the appellant. He interrogated and recorded the appellant's statement. The appellant told PW12 the motorcycle (registration Number MC 443 AFX) was his property he bought from one Simon in Moshi. Later, PW12 learned that the motorcycle and other items the police found on the appellant were part of an ongoing murder investigation at Mikumi Police Station under ASP Zabron Harrison Msusi (PW13).

ASP Epimark Mwijage (PW3) was the police officer in command of Mikumi Police Station when the deceased died. PW3 led a team of officers to the area where the deceased body was. These officers first

saw drops of blood, which they followed to where a deceased body lay facing the ground. The officers saw wounds on the back and his hands. PW3 stated that he and his colleagues surmised that a sharp object caused the wounds. F.2193 DC Joseph (PW7) was among the officers who accompanied PW3 to the crime scene. PW3 assigned him to draw a sketch map of the scene (exhibit P4) and transfer the body to the hospital mortuary.

A medical officer, Simon Venant Nkwera (PW14) from St. Kizito Hospital at Mikumi, performed a post-mortem examination on the deceased's body. Apart from his report, which he tendered as exhibit P7, PW14 testified that the deceased suffered five wounds on his head from what appeared to be a sharp object. The deceased had two cut wounds on both hands. The left side of the deceased's chest and the back of his head had cut wounds.

In his defence the appellant denied involvement in the death of the deceased. He insisted that the prosecution had fabricated this case against him. He disputed the prosecution evidence placed him along Morogoro-Iringa Highway, he insisted that that same day he had arrived in Morogoro from Igunga, Tabora. He arrived at Msamvu Bus Station in Morogoro at 17:00 hrs. It was while he was looking for a

Guest House to spend the night, when a group of police officers accosted him and accused him of idling and loitering. The police took away his bus ticket and tearing it down. They took him to the Central Police Station in Morogoro.

Being aggrieved with his conviction and sentence, the appellant came to this Court.

At the hearing of this appeal on 25/04/2023, Mr. Tumaini Kweka, learned Principal State Attorney, assisted by Mr. John Mkonyi, learned State Attorney, appeared for the respondent Republic. Mr. Godfrey Gabriel Mwansoho learned advocate appeared for the appellant who was present in Court.

Mr. Mwansoho learned Advocate for the appellant, abandoned ground 8 in the Memorandum of appeal.

Concerning the second ground, Mr. Mwansoho described how he thought, the trial court misapplied the doctrine of recent possession to convict the appellant of murder. He cited the case of **KASHINJE JULIUS VS REPUBLIC** [2016] TZCA 222 TANZLII to support his argument that the prosecution in the trial that led to this appeal before

us did not prove the essential factors for the doctrine of recent possession to apply and convict the appellant.

He gave an example of the first essential factor to find the appellant with property belonging to the deceased. He argued that there is no evidence the day the deceased died, he was using the motorcycle (exhibit P3).

He wondered why the prosecution failed to bring witnesses like the deceased's parents and the motorcycle taxi operators (*boda boda*) to explain the whereabouts of the deceased and his activities the day he died. He referred to the evidence of PW2, the motorcycle owner, who gave the deceased that motorcycle on 6/1/2017. PW2 testified that she became aware of the death of the deceased on 11/1/2017 from the deceased's close friend. The learned Advocate wondered why the prosecution did not invite this close friend to testify. He submitted that the trial Judge misapplied the doctrine of recent possession because there is no evidence about the deceased's last day.

Mr. Mwansoho urged us to allow the second ground of appeal because the prosecution brought weak evidence, which is insufficient to apply the doctrine of recent possession to convict the appellant.

Mr. Mkonyi, learned State Attorney for the respondent Republic, disagreed with the argument behind the second ground of appeal contending that the trial Judge misapplied the doctrine of recent possession that tied the appellant with the murder of the deceased. The learned State Attorney argued that the case of **KASHINJE JULIUS VS REPUBLIC** (supra), which the appellant's counsel relied on, supports the prosecution's case. He identified the essential factors from that case which support the appellant's conviction.

After finding that there was no eye witness or direct evidence to the murder of the deceased Joseph Florence Msimbe, the trial Judge relied on the doctrine of recent possession.

We do not agree with the submission of the learned Advocate for the appellant that the trial Judge misapplied the doctrine of recent possession to convict the appellant. Several decisions of the Court have dealt with the issue of applicability of the doctrine of recent possession. One such decision is **JOSEPH MKUMBWA & SAMSON MWAKAGENDA V. R** [2011] TZCA 118 TANZLII, where the Court restated the position of the law on recent possession:

"Where a person is found in possession of a property recently stolen or unlawfully obtained,

he is presumed to have committed the offence connected with the person or place wherefrom the property was obtained. For the doctrine to apply as a basis of conviction, it must positively be proved, ***first*** *that the property was found with the suspect,* ***second,*** *that the property is positively the property of the complainant;* ***third,*** *that the property was recently stolen from the complainant; and* ***lastly*** *that the stolen thing in possession of the accused constitutes the subject of a charge against the accused. It must be the one that was stolen/obtained during the commission of the offence charged. The fact that the accused does not claim to be the owner of the property does not relieve the prosecution of their obligation to prove the above elements."*

Relating the four principles to the record of evidence in the instant appeal, firstly, a motorcycle (Registration No. MC 443 AFX) is the property that PW8 found in the appellant's possession after his arrest. Secondly, PW1 proved that he bought the motorcycle from its registered owner, Ibrahim Hassan Lusewa, on 09/4/2016 at a purchase price of shillings 1,350,000/= (exhibits P1 and P2). PW1 handed it over to his wife, PW2, who, on 6/1/2017, handed the

motorcycle to the deceased to operate the taxi business. Thirdly, three days later, on 9/1/2017, the deceased was killed, and on 10/1/2017, around 01:30, PW8 arrested the appellant, who was driving the same motorcycle PW2 had earlier handed to the deceased. Fourthly, the prosecution charged the appellant with the murder of the deceased because the police found riding a motorcycle stolen from the deceased.

Like the learned trial Judge, we can see no conclusion other than the appellant's involvement in killing the deceased to steal his motorcycle. The appellant has not explained how the motorcycle (exhibit P3) came into his possession, leaving Joseph Florence Msimbe dead. The prosecution evidence that led to the appellant's arrest after a hot pursuit outweighs the appellant's defence of alibi.

The appellant, who PW8 arrested and found in possession of the motorcycle (exhibit P3), gave a conflicting account of how he came into possession a few hours after the deceased, who had control, was brutally killed. He initially told PW12 that he bought from one Simon in Moshi. Later during his defence, the appellant offered an alibi: around 17:00 hrs. on 17/1/2017; he arrived in Morogoro from Igunga Tabora when police arrested him. We agree with the learned trial Judge that

the appellant failed to explain how the motorcycle stolen from the deceased came into his possession. The learned trial Judge was correct to draw inference that it is the appellant who killed the deceased.

Whoever stole the motorcycle from the deceased intended to cause his unlawful death. The report on post-mortem examination (exhibit P7) shows the extent of injuries inflicted on the deceased's body. The report concluded the cause of death was massive hemorrhage with multiple open wounds over the skull and limbs. With wrists cut off, a big deep wound on his chest, and another deep cut wound on the deceased's head, all point to an intention to cause unlawful death.

Mr. Mwansoho learned Advocate for the appellant, next expounded ground number 3.

Ground 3 questions the evidential value of the seizure certificate (exhibit P5) because it is inconsistent with the evidence of PW8, PW9, and PW10. He argued that although the certificate of seizure listed items that PW8 seized from the appellant, the items in this list kept changing as the exhibits moved from different police officers. He gave

the example of the items PW8 handed over to Fred Hagai Daudi (PW11) is different from the list the exhibit keeper, D/CPL Kwilinus (PW10), handled. The learned Advocate suggested that the items PW8 listed in the seizure certificate possibly belonged to a different person from the appellant.

Mr. Mkonyi learned State Attorney addressed the appellant's complaint over inconsistencies between the contents of the seizure certificate (exhibit P5) and the evidence of PW8, PW9, and PW10 concerning exhibits that police seized from the appellant on his arrest. He urged us to shrug off this complaint because those discrepancies were minor and did not shake the proof that the police found the appellant possessing a motorcycle stolen from the deceased. All the witnesses who handled items in the seizure certificate are unanimous about the motorcycle that police found in the appellant's possession.

Mr. Kweka, the learned Principal State Attorney, also stated that the seizure certificate (exhibit P5) complied with the legal requirements. He pointed out that PW8, the officer who seized the items after arresting the appellant, signed the certificate. The appellant, the subject of the search, also signed exhibit P5. Lastly, the

seizure certificate listed the items police found in the appellant's possession. The items included the motorcycle (exhibit P3).

We did not see any problem with the evidential value of the seizure certificate (exhibit P5). From the evidence of PW8, it is clear he stopped and searched the appellant as an emergency under section 42 (1) and (3) of the Criminal Procedure Act Cap 20 (the CPA). The appellant declined to stop the motorcycle he was riding well past midnight. As the motorcycle sped by, PW8 noticed the appellant had no shirt on his back. Suspecting he was carrying bhang, PW8 gave chase and arrested the appellant. We cannot question the legality or evidential value of the seizure certificate (exhibit P5) that PW8 prepared.

In our re-evaluation of evidence concerning ground 3, we indeed found a few minor inconsistencies concerning type of clothes found in the bag police impounded from the appellant (in exhibit P5). For example, PW8 stated that he handed over to PW11 a pair of jeans and two shirts. The seizure certificate (exhibit P5) listed three clothes, a pair of blue jeans and two shirts. PW10 testified that he received from PW11, a black bag with a shirt, a pair of blue jeans, and a head shawl (*mtandio*). It is clear to us that the discrepancies or inconsistencies

which the learned Advocate for appellant robustly highlighted, were minor and related to the items of clothing the police impounded when PW8 arrested the appellant. These minor discrepancies and inconsistencies did not in our view, shake the evidence of the black boxer motorcycle (exhibit P3) with registration number MC 443 AFX which the appellant was riding when PW8 caught up and arrested him. Inconsistencies would have been material if they related to the motorcycle (exhibit P3).

We accordingly dismiss the appellant's complaint in ground number 3.

Concerning ground 4, Mr. Mwansoho urged us to reject the appellant's caution statement (exhibit P6) and expunge it from the record. Inspector Zabron Msusi (PW13) recorded the statement on 11/01/2017 from 09:10 to 10:46 hrs. He stated that PW8 arrested the appellant at 01:00 hrs on 10/1/2017, but the police detained him until 05:00 hrs when they transferred him to a police station. He wondered why it took the police almost twenty-seven hours before PW13 recorded the caution statement on 11/1/2017 at 09:10 hrs. He referred to a statement the Court made in **MASHAKA PASTORY PAULO MAHENGI @ UHURU & OTHERS VS REPUBLIC** (supra) to

cement his argument that the recording of the appellant's caution statement violated the law:

> *"...the basic period available to the police for interviewing a person under restraint in respect of an offence is the period of four hours commencing at the time he was taken under restraint in respect of that offence, unless that period is either extended under section 51 of the Criminal Procedure Act, Cap 20 or in calculating the period available there is a period of time therein which is not to be reckoned as part of that period during the acts or omissions and for the purposes spelt out in section 50(2)(a) to (d)."*

In asking us to reject the caution statement which PW13 recorded beyond the basic period of four hours, Mr. Mwansoho suggested that the police used the twenty seven hours period to pressure the appellant into confessing the offence.

Both Mr. Kweka, learned Principal State Attorney, and Mr. Mkonyi, learned State Attorney, made valiant attempt to save the caution statement (exhibit P6). Statutory conditions regulating periods for interviews of the accused under restraints must be complied with. In the case of **MASHAKA PASTORY PAULO MAHENGI @ UHURU & OTHERS VS REPUBLIC** (supra) the learned advocate for the appellant referred, we extensively discussed timelines available for

recording caution statements under sections 50 and 51 of the Criminal Procedure Act, Cap 20. These provisions strictly regulate extensions of periods police have for interviews of the accused.

Section 50(1)(a) of the CPA states that the basic period police have to interview a person is four hours commencing when the police take him under restraint. The seizure certificate (exhibit P5) shows that PW8 took the appellant under police restraint on 10/1/2017 at 01:30 hrs. As a result of the control, the four hours available to police to interview the appellant began to run on 10/1/2017 from 01:30 hrs.

PW13 recorded the appellant's caution statement on 11/1/2017 from 09:10 to 10:46. This was twenty-eight hours up from when PW8 took custody of the appellant. The first witness in the trial within a trial, DSSGT Selemani (PW1), stated that he picked the appellant from custody at 07:20 hrs on 10/1/2017 and began to interview him over the unlawful possession of goods. In other words, DSSGT Selemani was already in violation of Section 50(1)(a) of the CPA when he began interviewing the appellant five hours after police had placed the appellant under their restraint. Although section 51 (1)(a) allows the officer in charge of the investigation to extend the four-hour basic period to not exceeding eight hours, the police did not comply with the

strict conditions for such an extension. First, section 51 (1)(a) requires an extension during the basic period of four hours. Secondly, the officer in charge of the investigation must inform the accused about the proposed extension. No wonder in **MASHAKA PASTORY PAULO MAHENGI @ UHURU & OTHERS VS REPUBLIC** (supra), we stated that failure to comply with section 50 of the CPA is fatal to any caution statement police record in violation of the basic periods available for interview.

PW13 recorded exhibit P6 twenty-eight hours after the appellant's initial restraint. Under the circumstances, it will not be in the best interests of justice to allow the caution statement (exhibit P6), which PW 13 recorded on 11/01/2017 at 09:10, to remain in the record of appeal.

We shall allow ground 4 in the memorandum of appeal and expunge the appellant's caution statement (exhibit P6) from the record of this appeal.

Concerning ground 7, the learned Advocate for the appellant blamed the trial Judge for convicting the appellant because of the weakness of his defence instead of convicting on the strength of the prosecution evidence. According to the learned Advocate, the trial

Judge ignored section 3(2) and section 110(2) of the Evidence Act Cap 6, which place on the prosecution a duty to prove its case beyond reasonable doubt, even where the defence evidence is weak. When we asked him to elaborate on where the trial court exploited the weakness in defence evidence, he quickly pointed at the defence of alibi, that the time the police claim to arrest the appellant, he was at Igunga and not at the crime scene. The trial Judge disregarded his alibi.

On ground 7 of the appeal, Mr. Mkonyi, the learned State Attorney, insisted that the trial court did not convict on the weakness of the defence evidence but after the prosecution proved its case beyond reasonable doubt. He added that there was sufficient circumstantial evidence that irresistibly pointed to the guilt of the appellant.

As we demonstrated earlier when disposing of ground 2, the chain of circumstantial evidence irresistibly led to the appellant. At the police station after his arrest, the appellant told PW12 that he owned the motorcycle (registration Number MC 443 AFX), which he bought from one Simon in Moshi. This was a lie, and he did not offer any further evidence to justify *bona fide* claim of right over the motorcycle. PW1 visited the police station, where he identified the motorcycle as his and

presented the sale agreement and the motorcycle registration card (exhibits P1 and P2). The chain of circumstantial evidence, which the prosecution proved, is complete and leaves no room for any possibility that anyone other than the appellant killed the deceased and stole the motorcycle.

In the event, evidence shows the prosecution presented circumstantial evidence and invoked the doctrine of recent possession to discharge its legal burden. We as a result dismiss ground 7 as well.

Through ground 9, the learned Advocate for the appellant blames the prosecution for failing to mention the names of the last persons the deceased interacted with before he died. He argued that the motorcycle taxi business is interactive, and other taxi operators must have had details to divulge in evidence. Failure to account for the deceased's last moments, he submitted, broke the chain of circumstantial evidence that the prosecution directed at the appellant.

In the case of **ABEL MATHIAS @ GUNZA @ BAHATI MAYANI V. R** [2023] TZCA 25 TANZLII, the Court stated that the doctrine "last person to be seen with the deceased" is a specie of circumstantial evidence, which in **MIRAJI IDD WAZIRI @ SIMANA & MSUMI RAMADHANI ASENGWA V. R** [2020] TZCA 387 TANZLII, we

elaborated this specie of circumstantial evidence to the effect that where there is evidence that an accused was the last person to be seen with the deceased alive then there is a presumption that he is the killer unless he offers a plausible explanation to the contrary.

We shall dismiss ground 9 in the memorandum of appeal.

Mr. Mwansoho, the learned Advocate for the appellant, combined grounds 1, 5, 6, and 10 and argued them together because they relate to the insufficiency of prosecution evidence to convict the appellant. He submitted that failure by the prosecution to bring crucial evidence weakened the prosecution case and created doubt which should favour the appellant. He identified DNA as crucial evidence, which the prosecution should have presented to strengthen the prosecution's case. The learned advocate referred to the evidence of bloodstains on the motorcycle fuel tank, the machete, and clothes and wondered why the prosecution failed to collect samples for DNA profiling to link the appellant to the murder of the deceased or to clear him.

The appellant's learned advocate also pointed out many other opportunities which the prosecution had to collect latent fingerprint evidence to prove that the appellant killed the deceased. He argued that the prosecution had failed to show that the deceased was riding

the motorcycle (exhibit P3) when he met his death. He argued that whether the appellant stole the motorcycle and killed the deceased would be resolved by uplifting fingerprints on the motorcycle.

Mr. Mwansoho was at pains to illustrate how police officers mishandled vital exhibits and violated the Police General Order (P.G.O.) 229. He referred to our earlier decision in **MASHAKA PASTORY PAULO MAHENGI @ UHURU & OTHERS VS REPUBLIC** [2015] TZCA 52 TANZLII where we stated that para. 3 of PGO 229 directs police officers to exercise "greatest care" when they handle such vital evidence as fingerprints, ballistics, and DNA to protect their integrity and chain of custody and avoid the risk of their contamination. He argued that police investigators lacked the diligence to protect and preserve critical exhibits they collected from the appellant. He referred to incidents during the trial when the police officers promised to take exhibits to the Government Chemist.

The learned advocate wondered why the prosecution spent much more time building a chain of circumstantial evidence than collecting and profiling the DNA evidence. After reporting to the trial court that prosecution was waiting for DNA profile reports; and adjourning the trial for almost 28 months to wait for DNA results, he wondered why

the prosecution still failed to present DNA evidence in court. The learned advocate surmised that prosecution did not present DNA results because those results were not helpful to the prosecution case.

In his reply to combined grounds 1, 5, 6, and 10, Mr. John Mkonyi, the learned State Attorney, conceded that the prosecution did not tender the evidence from the Chief Government Chemists on DNA profile. He was, however, quick to point out that the law does not make the DNA evidence compulsory. He added that failure to offer DNA evidence did not affect the weight of the case the prosecution built on the strength of doctrine of recent possession and circumstantial evidence. The learned State Attorney urged us to dismiss the appellant's grounds 1, 5, 6, and 10.

We have considered exciting submission in support of grounds 1, 5, 6, and 10 by Mr. Mwansoho. Much as the learned Advocate for the appellant regarded DNA and fingerprint evidence to be so vital, we think the prosecution had the discretion regarding which witness to call and which type of evidence to produce as long as they comply with the laws governing the admissibility of evidence, relevancy, competence, and compellability of witnesses to testify. In other words, subject to any written law applicable, choosing which witnesses to present to

court was a matter of prosecution's trial strategy. Mr. Mwansoho cannot impose his evidential preferences on the prosecution's trial strategy.

With due respect, Mr. Mkonyi learned State Attorney is correct to submit that the law in Tanzania, at the very least the Evidence Act Cap 6 governing the admissibility of evidence, does not make DNA evidence compulsory. As in the case of any other form of evidence in Tanzania, the admissibility of DNA evidence, fingerprint evidence or any other form of evidence depends on their relevance to an issue and whether they are admissible in accordance with any applicable written law. In the circumstances of this appeal, the prosecution was free to determine which form of evidence to prove its case and which, however probative, to discard. The defence enjoyed similar latitude to determine the form of evidence. DNA evidence is not the only evidence in this appeal by which the prosecution may prove the offence of murder against the appellant.

We do not think using DNA or fingerprint would have made the prosecution's legal burden of proof lighter or heavier. The legal burden of proving the appellant's guilt is throughout on the prosecution, who must establish the guilt beyond reasonable doubt. The burden of proof

beyond reasonable doubt does not depend on the availability of any particular form of evidence, like the DNA evidence, which the appellant's learned counsel describes as crucial.

We find grounds 1, 5, 6, and 10 devoid of merit, and we dismiss them.

In light of the foregoing, this appeal is hereby dismissed.

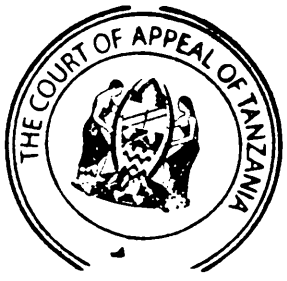
DATED at **MOROGORO** this 28th day of April, 2023.

I. H. JUMA
CHIEF JUSTICE

A. G. MWARIJA
JUSTICE OF APPEAL

O. O. MAKUNGU
JUSTICE OF APPEAL

This Judgment delivered this 2nd day of May, 2023 in the presence of Mr. Aziz Mahenge, learned counsel for the Appellant, Mr. Shabani Abdallah Kabelwa and Josebert Kitale, learned State Attorneys for the Respondent / Republic, is hereby certified as a true copy of the original.



J. E. FOVO
DEPUTY REGISTRAR
COURT OF APPEAL