IN THE HIGH COURT OF TANZANIA

(DAR ES SALAAM SUB DISTRICT REGISTRY)

AT DAR ES SALAAM

CRIMINAL APPEAL NO. 129 OF 2021

(Originating from decision of the District Court of Kinondoni at Kinondoni, Criminal Case No. 83 of 2020, before Hon. S.K. Jacob - RM dated 08/03/2021)

PEMBE S/O ABDALLAH MKALI.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGMENT

Date of last order: 26th August, 2022

Date of judgment: 30th September, 2022.

E.E. KAKOLAKI, J.

The appellant herein is aggrieved with the decision of the District Court of Kinondoni at Kinondoni, Criminal Case No. 83 of 2020, for being convicted and sentenced to life imprisonment on a charge of Rape; Contrary to section 130 (1) and (2)(e) and 131(1) of the Penal Code, [Cap 16 R.E 2019] (the Code). He has lodged the appeal before this court challenging the decision relying on fourteen (14) grounds of appeal which for the purposes of this judgment, I am not intending to reproduce them all as most of them were argued cumulatively during the hearing of the appeal, hence I will paraphrase them.

It was prosecution's case during the trial that, on 17th January, 2020 at Kimara Tanesco area within Ubungo District in Dar es salaam region, the appellant did have carnal knowledge of a girl of 6 years whose name is withheld for the purposes of preserving her identity as she will be referred as JJ herein. When the charge was placed before him for plea, the appellant denied any involvement in the offence. In its bid to prove the charge, the prosecution summoned in court six (6) witnesses, Kharim Mbwana (PW1), JJ (PW2), Mwangaze Kikingo (PW3), Dr. Steven Gervas (PW4), H. 6006 D/C Lukumay (PW5) and WP4509 D/Cpl Proscovia (PW6) and relied on two (2) exhibits, PF3 and accused caution statement as exhibits P1 and P2 respectively. On his part, the appellant relied on his own testimony and tendered no exhibit.

Upon full trial, the trial Court was satisfied that, the case was proved beyond to the hilt against the appellant, henceforth found him guilty and convicted him with Rape; Contrary to sections 130(1) and (2)(e) and 131(1) of the Penal Code as charged before he was sentenced to serve the sentence life imprisonment. As alluded to in his memorandum of appeal the appellant raised fourteen (14) grounds of appeal, praying this Court to allow the

appeal, quash the conviction, set aside the sentence meted on him and set him free.

Hearing of the appeal proceeded by way of written submission, whereas the appellant appeared unrepresented while respondent was fended by Ms. Estazia Odhiambo Wilson, learned State Attorney. The applicant's complaints can be conveniently summarised into five (5) grounds of appeal. One, recording of PW2's evidence was in violation of section 127(2) of the evidence Act, second, Conviction bases on weak visual identification evidence of PW1 and PW2, third, conviction based on unprocedurally recorded caution statement (exhibit P2), fourth, the charge was defective for failure to cite proper sentencing provision and fifth and last one that, prosecution case was not to the hilt against him.

To start with the first ground, the appellant's complaint is to the effect that, there was noncompliance of section 127(2) of the Evidence Act, [Cap. 6 R.E 2019] when recording evidence of PW2 the victim, hence her evidence should not have been relied on by the Court to convict him. He contended, when conducting voire dire test to PW2, to establish whether she understood the nature of oath or not and whether was promising to tell Court the truth, the trial magistrate recorded only answers without indicating the questions

posed to PW2 to enable the court to determine her competence to testify in terms of her intelligence to understand questions put forward to her and her ability to give rational answers. Due to that omission he argued the discredited testimony of PW2 cannot be relied upon as the same contained fatal irregularity which rendered it invalid evidence. To cement his stance he cited the case of **Mohamed Sainyeye Vs. R**, Criminal Appeal No.57 of 2010, **Hassan Hatibu Vs. R**, Criminal Appeal No.71 of 2002 and **Jafari Mohamed Vs. R**, Criminal Appeal No.112 of 2006 (both CAT unreported), where the Court insisted on recording questions and answers of the child witness. He also cited the case of **Kimbute Otiniel Vs. R**, Criminal Appeal No. 300 of 2011(CAT-unreported), where the improper conduct of voire dire test was held to reduce the testimony of the victim to unsworn evidence requiring corroboration. Relying on those cases the appellant prayed the court to discredit the testimony of PW2 and expunge it from the record. In his view, having expunged that piece of evidence the remaining one cannot sustain the appellant conviction.

On her part, Ms. Wilson for the Respondent while referring the Court at page 6-7 of the typed proceedings, argued on this ground, the analysis was made by the trial Court to assess whether PW2 understands the meaning of telling

the truth and she promised to tell the truth, hence her evidence was properly admitted in court as she not only understood the nature of telling the truth but she promised to tell the truth. In the alternative she submitted that, should the Court find that section 127(2) of the Evidence Act was not complied with, should not discard PW2's evidence as she told Court the truth in her evidence hence credible witness whose evidence is enough to warrant conviction against the appellant. The case of **Wambura Kiginga Vs. R**, Criminal Appeal No.301 of 2018 (CAT) was cited to cement her argument. In her view the case of **Sunday Juma versus Republic (supra)** cited by the appellant is distinguishable to the present one as in the latter case the victim did not promise to tell the truth while in this case she did. She therefore invited the Court to dismiss the Ground. In his rejoinder submission the appellant reiterated his submission in chief, thus had nothing new to add.

I have carefully followed the rival submission by both parties on this ground. It is common ground that, under section 127(2) of the Evidence Act, a court can receive evidence of a child witness of tender age and proceed convict without any corroboration as provided under section 127(3) of Evidence Act provided that two conditions are met. **One**, the child has administered oath

or affirmation and **two**, she/he promises to tell the truth and not lies in the course of giving evidence. See the case of **Godfrey Wilson Vs. R**, Criminal Appeal No. 168 of 2018 and **Wambura Kiginga** (supra). As to how does the court arrive to the conclusion to procure testimony of the child witness under oath or affirmation or satisfy itself that, the child has promised the Court to tell the truth and not lies, voire dire test has to be conducted. Voire dire test means examination conducted by Court in order to test capacity of a child of tender age to understand questions put to him or her and give rational answers. From that definition it is evident to me that, in conducting voire dire question must be put to the child witness so as to elicit information required before concluding that, she/he can testify on oath or affirmation or without both upon promising to tell the truth and not lies. The Court of Appeal in the case of **Godfrey Wilson** (supra) went further to give guidance on the type or nature of the questions to be put by the trial Court in arriving to that conclusion. It was suggested in the said case that, simple questions though not exhaustive can be put to the child witness such as *age of the child, the religion which the child professes and whether he/she understands the nature of oath and whether or not the child promises to tell the truth and not to tell lies.*

From the above cited guidance on how to conduct voire dire test, to me what matters is the findings made by the Court as how voire dire is conducted is a matter of style that is why guidelines on the questions to the preferred by the trial court were provided. The Court of Appeal in the case of **Kimolo Mohamed @Athuman Vs. R**, Criminal Appeal No. 412 Of 2015 (2015) TZCA 52 [14 April 2016] www.tanzilii.go.tz, had an opportunity to discuss on how voire dire is to be conducted and had this to say:

> *"We are mindful of the fact that **how a voire dire examination is conducted is a matter of style**. The determination of whether the witness understood the nature of oath could have been better done, we are nevertheless of the considered opinion that, in the circumstances of this case there was no prejudice occasioned to the appellant. After all the witness understood that to tell untruth is bad."*

In the matter at hand it is true as submitted by the appellant and the cases he relied on that, questions put to PW2 by the trial court before concluding that she had promised to tell the truth and not lies were not indicated. However as stated above and rightly so by the Court of Appeal in **Kimolo Mohamed @Athuman** (supra) how voire dire is conducted is a matter of style in as long as the Court is satisfied of what it wanted to elicit from the

child witness. In this case as stated by Ms. Wilson, which submission I subscribe to, looking at page 6 of the typed proceedings, I am satisfied that, though questions were not recorded, the recorded answers suggest that, all questions suggested in the case of **Godfrey Wilson** (supra) were put to PW2. To let the trial court proceedings voice itself I quote the excerpt from that page:

> ***PW2****: J. J. M (name hidden). Msolani primary standard 1, I am Muslim. I used to go to the Mosque on Saturday and Sunday. We are taught Arifu. We are taught to speak the truth. I do speak the truth. If I don't speak the truth the Satan will fire me. I promise to tell you the truth. I am six years old.*
>
> *Court: The child understands the truth and promise the Court to tell the truth.*
>
> ***Sgd: Donasian – RM***
>
> ***13/02/2020***

From the above excerpt one will appreciate as this Court does that, the trial court upon examining PW2 was satisfied that, she was understood the nature of truth and telling the truth and not lies which is the prerequisite condition under section 127(2) of Evidence Act, before her testimony was taken by the court. I so find as the answers suggest that the questions on her age, religion

she professes, whether she understands the nature of oath and whether she promises to tell the truth and not lies. Further to that, the appellant did not tell the Court as to how was he prejudiced by the Court's omission to record the questions. It is from those reasons, I do not buy appellant's complaint that non recording of questions put to PW2 affected her evidence as the same met the conditions set under section 127(2) of Evidence Act, hence this ground in lacking in merit.

In now move to the second ground where the complaint is on the trial court's reliance on weak evidence of identification of PW1 and PW2 to convict him. It was the appellant's submission that, as commission of an offence is alleged to have occurred during night, disclosure of appellant's description such as body physique, complexion, size, attire and any peculiar body features was so pivotal for the Court to satisfy itself that, it was actually him who perpetrated the alleged rape. The appellant on this ground also argued, the intensity of source of light that enabled the said witnesses to identify him ought to be clearly stated. He said, it was not enough for them to state that there was a full tube light which illuminated the scene as the intensity of light was not stated. In his view the issue of visual identification was weak and unreliable, hence the trial court should not have acted on it unless all

possibilities of mistaken identity are eliminated which was not the case. To bolster his argument he cited the cases of **R V. Turnbull** 1977 QB 224, **Waziri Amani Vs. R** [1980] TLR 250, **Chokera Mwita Vs. R**, Criminal Appeal No.17 of 2010 and **Jaribu Abdallah Vs. R**, Criminal Appeal No.220 of 1994 (both CAT unreported). Responding to this ground Ms. Wilson viewed that, assailant's description is necessary when the victim is not previous known his/her assailant, as the object is to eliminate the possibility of mistaken identity. The same is contrary where the assailant is known to the victim. She argued looking at the record in this case particularly the testimonies of PW1,PW2,PW3 and DW1 the victim all were known each other as were living in the same house hence there is no chance of mistaken identity. On top of that she stated, soon after the incident the victim narrated her tale to PW1 and PW3 and while naming the appellant as the person who raped her. All those facts in her view eliminated the chance of mistaken identity of the appellant. To support her argument she cited the case of **Kadili Ally Vs. R,** Criminal Appeal No.99 of 2020. She stressed ground has no merit should be dismissed. On his side the appellant did not have anything material to rejoin than reiterating is submission in chief.

It is a legal stance under the authorities relied on by the appellant that, where the condition for identification are unfavourable, descriptions of the suspect must be provided by the identifying person. However that requirement depends on the circumstances of each case particularly where the accused is not known before to the witness. See the cases of **Juma Shaban @ Juma Vs. R**, Criminal Appeal No. 168 of 2004 and **Mussa Hassan and Another Vs. R**, Criminal Appeal No. 292 of 2011. In this case as submitted by Ms. Wilson, the appellant was the very well-known to PW1 and PW2 before the incident, as were all living in the same house. Secondly, the offence was committed in the house where both PW1, PW2 and the appellant used to be accommodated. Thirdly, as per PW2's evidence he saw the appellant with PW1 in the room in which PW1 came from holding her underwear before the appellant took to his heels only to the arrested by the police on the same night after reporting of the incidence at police. Fourthly, it is in PW1's evidence that there was brightly light from the tube light which assisted him to properly identify the appellant. Fifthly, PW2 named the appellant to have raped her to PW1 and PW3 immediately after the incident something which gave assurance and lessened the possibility of mistaken identity of the appellant. It is the law that the ability of the witness to name

his/her assailant the soonest is an assurance of unmistaken identity. See the case of **Marwa Wangiti Mwita and Another Vs. R**, [2002] TLR 39. With all that evidence in record I am satisfied that, it was unnecessary for PW1 and PW2 to give descriptions of the appellant who was all along living with them and that on the material night was at home with them before he fled after committing the offence. This ground is wanting in merit too.

Next for consideration is the third ground on the complaint of the trial Court basing appellant's conviction on unprocedurally recorded caution statement (exhibit P2). It is the appellant's contention on this ground the trial court was in error to rely on repudiated/retracted caution statement (exhibit P2) as the same was recorded after four hours of his arrest thus contravened the provision of sections 50(1)(a) and 51(1)(a) of the Criminal Procedure Act, [Cap 20 RE 20 19]. And further that, when interrogated by PW5 H-6006 D/C Lulumay, in the room there was another police officer D/C Peter who was close and saw what was going on. That aside, he asserted was forced to sign the said exhibit P2 after being assaulted hence the same was supposed to be corroborated before being relied on to convict him. To support his statement he relied on the case of **Elia Nsamba Shapwata and another Vs. R**, Criminal Appeal No.92 of 2007(CAT-unreported) where

it was stated that corroboration is always desirable to support a confession which has been retracted or repudiated before acting on it. Responding to this ground Ms. Wilson argued that, exhibit P2 was admitted as evidence after an inquiry was conducted following the objection raised by the appellant. She distinguished the case relied on by the applicant submitting that, in that case unlike in this case the trial court had admitted the caution statements which were objected without conducting an inquiry. As regard to the presence of other police officers in the interrogation room she responded, the appellant did not show how he was prejudiced by the presence of another person in a room, hence invited the Court to dismiss the ground.

Having considered both parties submission as well as the record, I think this ground need detain me much. To start with the complaint on infraction of sections 50(1)(a) and 51(1)(a) of the CPA, there is no dispute that none compliance of the section when recording the caution statement renders it inadmissible. However, in this matter the said exhibit P2 discloses to have been recorded at 23.45 hours the time which find to be within four hours of his arrest as it is alleged he was arrested soon after commission of an offence which was committed at 21.00 hours. Hence the complaint is unfounded. As

to the assertion that, the statement exhibit P2 was recorded by PW5 in the presence of another police office the same is not contested by Ms. Wilson as it is also confirmed by PW1 and PW2 during the inquiry the proceedings at pages 19 -23 of the proceedings. It is the common ground and I need not cite any authority that, when recording caution statement the accused person needs privacy so as to be able to procure his statement voluntarily. Any interruption by another person no doubt brings in undue influence or threat that affects his voluntariness regardless of whether that person does anything inferring promise or intimidation for the purposes of procuring his statement. It is the law that, any statement recorded by police officer in the presence of other police officers is rendered irregular. This legal stance was stated by the Court of Appeal in the case of **Kisonga Ahmed Issa & Another Vs. Republic,** Consolidated Criminal Appeal No. 17 of 2016 and 362 of 2017 (CAT-unreported) where the Court observed that:

> *It is further noted that the cautioned statement of the first appellant was recorded by Pw1 in the presence of other police officers. That was yet another irregularity as the right of privacy to the first appellant was infringed.*

With the above position of the law, in this case since exhibit P2 was recorded by PW5 in the presence of another police office D/C Peter, hence in violation

of the law, I find the same was incompetent for admission as evidence in Court. I therefore on that ground proceed to expunge it from the record.

In now turn to consider the fourth ground on the complaint of defect of charge in which the appellant contended the same contained improper sentencing provision. He said the charge being a foundation of criminal proceedings, under section 132 and 135(a)(ii) of the CPA, disclosure of specific provisions creating the offence and punishment is very crucial, so as to enable to accused understand the nature of the offence facing him as well as the punishment he likely suffer and be in a position to properly marshal his defence. In this matter he contended the cited punishment provision in the charge placed before him is section 131(1) of the Penal Code and not section 131(3) of the Penal Code, providing for sentence to be imposed to the offender committed rape offence to the child of the age 10 years and below. According to him, that omission disabled him to appreciate the seriousness of the offence laid at his door and prepare his defence, hence was prejudiced. He place reliance on the cases of **Said Hussein Vs. R,** Criminal Appeal No. 210 of 2016, **Zarau Issa Vs. R**, Criminal Appeal No.159 of 2010, **John Martin Marwa Vs. R**, Criminal Appeal No.20 of 2014, **Abdallah Ally Vs. R**, Criminal Appeal No.253 of 2013 and **Simba**

Nyangura Vs. R, Criminal Appeal No.144 of 2008 (CAT-unreported), where the Court among other things observed that, wrong or non-citation of the proper provisions of the Penal Code, in which the charge is predicated /preferred, leaves the appellant unaware that, the offence of rape is serious one, hence fatal irregularity. He thus prayed the Court to find the ground meritorious and proceed to allow the appeal.

Responding on this Ms. Wilson while conceding to the complained of omission by the prosecution to cite subsection (3) to section 131 of the Penal Code providing for sentence, she argued that, such wrong citation of the sentence provision is curable under section 388 of the CPA. She said the appellant did not show as to how he was prejudiced which such omission as he was aware of the charge facing and equally defended himself. In her view this ground is devoid of merit hence be dismissed. In his rejoinder the appellant insisted that, the defect in the charge prejudiced him and that, since the same was not amended it was improper for the trial court to rely on it.

It is true as submitted by the appellant that sections 132 and 135(a)(ii) of the CPA governs the mode and the manner or format in which the charge or information are to be preferred. Section 132 of the CPA states that, every

charge or information must contain a statement of the specific offence or offences charged as well as the particulars reasonably showing the nature of the offence or offences charged. I only disagree with him when it comes to the assertion that, wrong citation or non-citation of the sentencing provision in rape case vitiates the charge as that was the position of the law before as referred in the cases cited by him. However, the position has changed in the awake of the cases of **Peter Kabi and Another v. R**, Criminal Appeal No. 5 of 2020, **Abubakari Msafiri Vs. R**, Criminal Appeal No. 378 of 2017 (CAT-unreported) and later on the case of **Abdul Mohamed Namwanga @ Madodo Vs. R**, Criminal Appeal No. 257 of 2020 (CAT-unreported) in which the Court of Appeal the after consideration of the provision of section 135(a)(ii) of the CPA, took the position that, the omission like the one complained of by the appellant in this matter is curable under section 388 of the CPA. The Court reached that conclusion after satisfying itself that, it was not the intention of the Parliament under section 135(a)(ii) of the CPA that, the sentencing provision must be indicated in the statement of offence of the charge, as the only mandatory requirement is the citation of the section of the enactment creating the offence. Section 135(a)(ii) reads:

123. The following provisions of this section shall apply to all charges and informations and, notwithstanding any rule of law or practice, a charge or an information shall, subject to the provisions of this Act, not be open to objection in respect of its form or contents if it is framed in accordance with the provisions of this section—

(a)(ii) ***the statement of offence shall describe the offence shortly in ordinary language*** *avoiding as far as possible the use of technical terms and without necessarily stating all the essential elements of the offence and,* ***if the offence charged is one created by enactment, shall contain a reference to the section of the enactment creating the offence****; (Emphasis supplied)*

In the case of **Abdul Mohamed Namwanga @ Madodo** (supra), when deliberating on the applicability of section 135(a)(ii) of CPA in charge preparations found that, the citation of sentencing provision in the charge has always been a practice and not the requirement of the law since the forms created under the CPA including the one of Rape offence, do not indicate the sentencing provision. In so doing the Court after citing the sample charges for Rape and Murder offences from the forms in the CPA observed thus:

> *"It is noticeable that the above model charge for rape does not include section 131 of the Pena! Code, which is the applicable punishment provision, nor is the penalty provision for murder (that is, section 197 of the Penal Code) indicated in the respective model information. In the premises,* ***we agree with Ms. Zegeli that it is only a matter of practice that the punishment provision is cited in the charge or information along with the provision creating the charged offence. It is a practice that we endorse but we hesitate to equate it with an imperious legal prerequisite that would render a charge or information incurably defective****. (Emphasis added).*

With the above position of the law, I have no doubt in finding in this matter that the complained of omission to cite the sentencing provision by the prosecution as conceded and submitted on by Ms. Wilson that the same is curable under section 388 of the CPA. I so hold as there is nothing submitted by the appellant to prove to this court's satisfaction that, failure of the prosecution to cite the sentencing provision in this case did not cause any injustice to the appellant as he was sentenced in accordance with the provisions of section 131(3) of the Penal Code. Similar position was taken by the Court of Appeal in the case of **Peter Kabi** (supra), when the Court viewed thus:

> *"On our part, we are inclined to agree with the learned State Attorney that the provision of the law that was invoked in charging the appellants was improper in the sense that the provision providing for punishment was not indicated. However, we find that this is no longer an incurable anomaly in the wake of the case of* ***Jamal Ally @ Salum v. Republic****, Criminal Appeal No. 52 of 2017 (unreported) where it was held that failure to cite the punishment provision in a rape case was curable under section 388 of the CPA."*

Since the appellant was not prejudiced anyhow, I find this complaint is devoid of merit and dismiss ground four.

Now I move to the fifth and the last ground, where the appellant is contending that, the prosecution case was not proved against him beyond reasonable doubt. In her response Ms. Wilson replied generally that the case of rape facing the appellant was proved to the hilt. With the two confliction arguments, it is now opportune for this Court being the first appellate court to examine the record and analyse the evidence generally so as to establish whether the charge of rape levelled against the appellant was proved to the required standard which is beyond reasonable doubt.

In this case as alluded to above in the facts of the case, the appellant was accused of raping the child of 6 years (PW1) on the on 17/01/2020 at Kimara

Tanesco area within Ubungo District in Dar es salaam Region. The victim being a child of tender age the prosecution had to prove the following, **one**, her age, **second**, whether there was penetration and **third**, who perpetrated the said offence to her. It is the law that, age of the child can be proved by the child him/herself, evidence of parents or close relative, by birth certificate or medical practitioner. See the case of **Isaya Renatus Vs. R**, Criminal Appeal No. 542 of 2015 and **Athanas Ngomai Vs. R**, Cirminal Appeal No. 57 of 2018 (all CAT-unreported). In **Isaya Renatus** (supra) on who can prove the child's age the Court of Appeal had the following to say:

> *"… the fact that age is of great essence in establishing the offence of statutory rape under section 130(1)(2)(e),… under the provision, it is a requirement that the victim must be under the age of eighteen. That being so, it is most desirable that the evidence as to proof of age be given by the victim, relative, parent, medical practitioner or where available, by the production of a birth certificate."*

As to whether she was raped or not and who raped her, it is trite law that, in sexual offence the best evidence comes from the victim herself. See the case of **Selemani Makumba Vs. R**, [2006] TLR 379, in line with section 127(6) of Evidence Act. The other principle it that, every witness is entitled

to credence and belief to this evidence unless there are good and cogent reasons to hold otherwise. This principle was well stated in the cases of **Goodluck Kyando Vs. R,** (2006) TLR 363 and **Mathias Bundala Vs. R,** Criminal Appeal No 62 of 2004. It was held by the Court in **Goodluck Kyando** (supra) thus:

> *"Every witness is entitled to credence and must be believed and his testimony accepted unless there are good and cogent reasons for not believing a witness."*

In this case the age of PW1 was proved by the medical doctor (PW4) who examined her in both her oral testimony and PF3 (ehibit P1) stating that she was six (6) years old. As regard to whether she was raped PW2 and did so, in her testimony at page 6-7 of the typed proceedings is recorded to stated that, was raped by the appellant who she identified as uncle called Pembe whom they were living with. She said "Pembe alinibaka" and that the said offence was committed in her brother's room one Kharim. As during cross examination by the appellant she insisted that the appellant committed that offence to her six times. Her evidence on where the offence was perpetrated was corroborated by the said Kharim who testified as PW1 to the effect that he found the appellant with Pw2 in the room. As to her evidence that she

was raped before meaning more than once, her evidence was corroborated by PW4 the doctor who examined her, when confirmed that PW2 had no hymen which suggesting was removed by blunt object and that, she had bruises in her vagina, hence concluded that she was raped. PW4's evidence is also reflected in the PF3 (exhibit P1) in that PW2's vagina was perforated with lacerations and conclusion that she was raped. On his side the appellant during his defence informed the court that, the case against him was concocted as he had a family beef. When cross examined the possible grudges with the prosecution witnesses said, there was ill relationship between himself and PW2's aunt who was pushing him to surrender the title deed to her mother. Having considered his defence I don't see any connection of the alleged family beef with the witnesses who testified in court such as PW1 and PW4 who examined PW2. I fail to comprehend as to how PW4 could have joined the conspiracy to frame up him in such serious allegation of raping PW2. That aside, the appellant did not even cross examine prosecution witness regarding alleged family beef, hence the same remains to be an afterthought as rightly found by the trial Court hence disregard the same. With the above discussed prosecution evidence like the trial Court, this Court is satisfied that, PW2 was raped and the perpetrator

of the offence was appellant, hence the prosecution proved the charge of rape to the hilt. I therefore find this ground of appeal wanting too, hence unable to fault the trial Court's findings.

That said and done, this appeal is without merit and I dismiss it in its entirety.

Accordingly ordered.

Dated at Dar es Salaam this 30th September 2022.

E. E. KAKOLAKI

JUDGE

30/09/2022.

The judgment has been delivered at Dar es Salaam today 30th day of September, 2022 in the presence of the appellant in person, Ms. Dhamiri Masinde, State Attorney for the respondent and Ms. Monica Msuya, Court clerk.

Right of Appeal explained.

E. E. KAKOLAKI

JUDGE

23/09/2022.


IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY