IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF TABORA
AT TABORA
CONSOLIDATED CRIMINAL APPEALS NO. 113,114,115,116,117,111 OF 2017 & 190 0F 2016

(Arising from Criminal Case No. 83 of 2009 of the District Court of Nzega at Nzega; S.J. KAINDA-SRM)

1. MAWAZO SALIBOKO @ SHAGI
2. EDWARD BUNELA @ NURU
3. SHABAN MOHAMED AMOUR
4. JOHN PASCHAL CHARLES NDAKI
5. PIUS WILLIAM MABULA @ KULWA
6. ALOYCE PETER ZINDORO
7. DAVID CHARLES NDAKI
8. FRANK SELEMANI KABUCHE

.....APPELLANTS

VERSUS

THE DIRECTOR OF PUBLIC

PROSECUTIONS.....RESPONDENT/APPELLANT

AGAINST;

1. MAWAZO SALIBOKO @ SHAGI
2. JUMANNE NSHIMBA @ LUBIBI NINDILO
3. MASALI CHILU
4. EDWARD BUNELA @ NURU
5. SHABANI MOHAMED AMOUR
6. JOHN PASCHAL CHARLES NDAKI
7. PIUS WILIAM MABULA @ KULWA
8. KULWA MAKOLE MABULA
9. ALOYCE PETER ZINDOLO
10. DAVID CHARLES NDAKI
11. TEDDY GABRIEL KIMARIO
12. FRANK SELEMANI KABUCHE
13. AGNES NSHIMBA
14. MAKONO MAGANYALA KANIKI
15. MARKO NDOSELA MWANAGANDILA
16. GEOFREY IGNATUS KAPALATA

...RESPONDENTS

JUDGMENT

Date of last order: 22nd May, 2023

Date of Judgment: 02nd June, 2023

MATUMA, J

In this judgment we have three parties according to its peculiarity nature. They are; the **Appellants** (those who were convicted during trial), the **Respondent/Appellant** (DPP), and the **Respondents** to the DPP's appeal (those who were acquitted fully or partly). For easy of reference, I will be referring them under such categories or tittles. The Respondents stood charged in the District Court of Nzega at Nzega for various counts namely;

Conspiracy to commit an offence contrary to section 384 of the Penal Code and ***Armed Robbery*** contrary to section 287A of the same Code against the 1st to the 12th respondents, fifteen (15) counts of ***money laundering*** contrary to various provisions of the Anti-money laundering Act, N0.12 of 2006 for all accused persons now the Respondents herein and ***receiving stolen properties or unlawfully obtained*** against the 13th, 14th and 15th respondents.

At the end of the prosecution case, the 11th respondent was acquitted for having no case to answer, the 13th, 14th, 15th, and 16th respondents were acquitted for the offences of money laundering for having no case to answer and after a full trial, the trial court acquitted the 2nd, 3rd and 8th respondents in both counts of conspiracy and Armed Robbery. It as well acquitted all the remaining respondents in respect of all counts of money laundering,

and acquitted as well the 13th, 14th, 15th and 16th respondents for the counts of receiving stolen properties or unlawful obtained.

The trial court was however satisfied that the prosecutions managed to prove the offences of conspiracy to commit an offence and Armed Robbery against the appellants herein above. It found them guilty and convicted them accordingly of the offences.

They were sentenced to serve for the two counts supra; two (2) years and thirty (30) years imprisonment term respectively. The sentences were ordered to run concurrently.

The convicted accused persons now the appellants were dissatisfied with such conviction and sentence hence the current appeal which was filed by each appellant separately. The Director of Public Prosecutions was as well dissatisfied with the acquittal of all the respondents as stated above for the offences of money laundering and receiving stolen property or unlawful obtained. He was as well not satisfied with the ruling of no case to answer.

He thus lodged a cross appeal. The appeals by both parties were ordered to be consolidated and determined together hence this consolidated criminal appeal by both parties.

The appellants in their different petitions of appeals had different grounds but commonly challenged the trial court to rely into their repudiated confessions to find them guilty and subsequently convict them of the two offences supra; conspiracy and Armed Robbery.

On the other hand, the DPP lodged a total of eight (8) grounds of appeal against the acquittals but at the hearing of this appeal some of the grounds were withdrawn and some condensed and argued together. The argued complaints by the DPP were thus;

i. *That, the Trial Magistrate erred in law to have ruled out that the charges of money laundering could not have been proved against the 11th, 13th, 14, 15th and 16th respondents without them to have been charged and convicted with a predicate offence.*

ii. *That, the Trial Magistrate erred in law to have acquitted the rest respondents for the money laundering counts on the reason that there was no evidence of concealment of the proceeds of the crime of an Armed Robbery incident.*

iii. *That, the Trial Court erred to have acquitted Geofrey Ignatus Kapalata (16th respondent) on the ground that he did not have knowledge that the money he received (Tshs. 18,000,000/=) were proceeds of the crime.*

iv. *That, the Trial Magistrate erred to acquit the 2nd, 3rd and 8th respondents for improper analysis of evidence against them which had it been properly analysed, it would lead to their conviction.*

v. *That, the Trial Court erred to acquit the 11th respondent (Teddy Gabriel Kimario) on a no case to answer.*

From the complaints of both parties as reflected herein above, this appeal can be determined in a justice manner and conveniently by determining only two issue as to;

(i) ***Whether the prosecutions had managed to establish a prima-facie case against the respondents who were acquitted on a no case to answer and finally proved the case beyond reasonable doubts against all respondents in their respective charged counts.***

(ii) Depending on the outcome of the first (i) issue supra, whether the trial Court properly convicted the appellants and wrongly acquitted the respondents.

At the hearing of this appeal the Director of public prosecutions was represented by Mr. Robert Kidando (SSA), Riziki Matitu (SSA), Upendo Malulu (SSA) and Hebel Kihaka (SSA) who argued the DPP's appeal against the Respondents while Mr. Rwegira Deusdedit learned Senior State Attorney by way of written submissions on behalf of the Republic/DPP argued against the Appellants' appeal.

Mr. Yusuf Mwangazambili learned advocate represented the 4th, 6th and 10th respondents who are also appellants herein as the 2nd, 4th and 7th Appellants namely Edward Bunela @ Nuru, John Paschal Ndaki and David Charles Ndaki. M/S Flavia Francis learned advocate represented Frank Selemani Kabuche the 12th respondent who is also the 8th Appellant herein. Mr. Kashindye Lucas learned advocate represented the 13th respondent Agnes Nshimba.

Mr. Deya Outa learned advocate represented the 14th and 15th respondents. The 14th respondent Makono Maganyala Kaniki was indisputably proved dead and therefore the appeal abated against him in terms of section 386A of the CPA, Cap 20.

Mr. Kashindye Lucas and Mr. Deya Outa learned advocates who represented the 13th and 15th respondents respectively argued that their respective clients who were acquitted during trial have no appeal lodged against them by the DPP for them to answer.

Mr. Kashindye for instance argued that his client Agnes Nshimba was charged of two counts; **money laundering** and

receiving stolen properties. She was acquitted of the offence of money laundering on the ruling of no case to answer.

That, the DPP did not appeal against such ruling under the dictates of section 178 (1) and (3) of the CPA.

The learned advocate further argued that his client entered the defence on the offence of receiving stolen property and she was finally acquitted on that count but the DPP's appeal does not contain any ground of appeal against such acquittal. He then stressed that this appeal against his client is prejudicial for she has nothing to answer.

On his part Mr. Deya Outa learned advocate argued that his client the 15th respondent Marko Ndosela Mwanagandila was as well acquitted of the money laundering count on a no case to answer. That, the DPP issued a notice of an intention to appeal but didn't pursue further his appeal.

He further argued that at the end of trial his client was again acquitted on the offence of receiving stolen property. The DPP in his first ground of appeal challenged such acquittal but at the outset of the hearing of this appeal withdrawn such a ground. Mr. Outa stressed that the first ground having been withdrawn marks the 15th respondent with no appeal against him. He tried to submit on alternatives but I do not see any need to address such alternatives on the reasons to be apparent very soon.

Mr. Kidando learned Senior State Attorney responding on the arguments of Mr. Outa and Mr. Kashindye politely conceded that although the notice of appeal indicates that their appeal is against both the ruling of a no case to answer on the offence of money laundering and the judgment on the offence of receiving stolen

properties, they did not draft a specific ground of appeal against the 13th and 15th respondents.

For easy of reference, I find it better to quote the reply by Mr. Kidando (SSA);

> *"What we concede is that in our petition of appeal we did not put a specific ground challenging the ruling which acquitted the 13th and 15th respondents. It is true we don't have an appeal against the 13th and 15th respondents in the offence of receiving stolen property".*

From the herein above quotation from the submissions of the learned Senior State Attorney, the arguments of Mr. Outa and Mr. Kashindye learned advocates and the records of the trial court, it is obvious that the 13th respondent Agness Nshimba and the 15th respondent Marko Ndosela Mwanagandila were each charged for two counts namely, money laundering and receiving stolen property or property unlawful acquired.

They were both acquitted for no case to answer in respect of the offence of money laundering and at the final judgment of the trial court they were as well acquitted of the offence of receiving stolen property. No appeal was preferred by the DPP against such acquittal seeking an order that they had a case to answer and for them to be ordered to go back to the trial court to enter their respective defences. There is as well no appeal for the acquittal in respect of the offence of receiving stolen property.

As rightly submitted by Mr. Outa learned advocate, in the absence of an appeal by the DPP as stated supra, such acquittal of the 13th and 15th respondents was final and conclusive. This court has no jurisdiction to alter the unchallenged final findings of the

trial court. Such decision remains intact in favour of such respondents unless otherwise determined by a competent court upon being properly moved to do so.

I therefore agree with Mr. Kashindye learned advocate that any attempt to ground these two respondents into the current appeal would be prejudicial to them because they are standing before the court without knowing what should they stand to answer against the appeal by the DPP.

Since the 13th and 15th respondents have nothing to defend against the DPP's appeal, I find that their respective names were wrongly and or mistakenly included in the list of the respondents in the DPP's appeal. I cannot therefore dismiss the appeal against them because there is no appeal against them. Instead, I do hereby strike out the appeal against them for having wrongly included their names. The DPP is at liberty to re-institute the appeal against them after a due legal process.

Now back to the issues I have raised supra as to whether the prosecutions managed to prove the case against the respondents in their respective counts and therefore properly convicted Mawazo Saliboko @ Shagi, Edward Bunela @ Nuru, Shaban Mohamed Amour, John Pascal Charles @ Ndaki, Pius William Mabula @ Kulwa, Aloyce Peter Zindolo, David Charles Ndaki and Frank Seleman Kabuche on both counts of conspiracy and Armed Robbery offences and wrongly acquitted Jumanne Nshimba @ Lubibi Nindilo, Masali Chilu, Kulwa Makole Mabula, Teddy Gabriel Kimario and Geofrey Ignatus Kapalata for their respective charged offences as stated supra, and whether the trial court wrongly entered the ruling of no case to answer as reflected above, I will

start to determine the evidence on record in line with the arguments of the parties made at the hearing of this appeal.

The major crime which led to the charging of the accused persons now the respondents supra was an Armed Robbery incident which was committed by a group of thugs on the 21st April, 2009 at the Golden Pride Project of Resolute (Tanzania) limited in Lusu village within Nzega District in Tabora region.

The thugs at a gun point stole six and a half (6 ½) bars/blocks of gold weighing at 130,880 grams valued at **Tshs. 4,093,534,137/=**, one fire arm make short gun No. R 659634 and one radio call make Motorola with serial No. 672TGUG859 the properties of Resolute (Tanzania) Limited. In the course of such stealing the thugs used actual violence by shooting and injuring the security guards thereat namely; Vitalis Kagose Bernard and Joseph Haule Gerald.

On record it is not in dispute that the thugs were not physically identified. That is clearly stated by prosecution witnesses who were on the crime scene that fateful night. Thus for instance one of the victim Joseph Gerald Haule PW4 at page 80 line 14 to 15 of the typed proceedings made it clear that the thugs had covered their faces by masks made out of socks leaving only eyes and mouth. During cross examination by advocate Outa at page 85 line 15 the witness on the identification concluded; ***"I did not identify them as the light were not good"***

PW5: Fatuma Jumbe Rajabu who was at the CCTV room watching the crime also had the same evidence that she could not identify the thugs because they were covering their faces;

"I did not identify the persons. They were armed. They covered their faces with masks". Page 117 line 14 – 16.

PW10: Nico Globber who was put under arrest by the thugs also had the same evidence pertaining to identification;

"The numbers of invaders were about five (5) or six (6). I did identify no one as they wear masks on their faces".

Page 158 line 1.

For avoidance to make this judgment too long let me not reproduce further the evidence on record regarding the identification of the robbers who committed the crime. Suffices it to conclude as herein above quoted that none of the invaders was identified at the crime scene because the light was not good and the invaders had covered their respective faces by masks.

How then the appellants in this appeal and the respondents generally in the DPP's appeal became arrested and connected to the crime, it is from the information received from Police **Informers.**

That was stated by PW23 C.9895 D/Sgt Laurent at page 383 of the typed proceedings when he testified that on 24/04/2009 just three days after the crime incidence he was appointed to join the investigation team so that they could find who committed the crime in question. He then started to communicate with their informers who finally on 25/04/2009 told him that among the robbers who committed such crime was the 1st appellant Mawazo Saliboko @ Shagi;

"We started a follow-up by communicating with various Police Informers that was on 25/04/2009, on 26/04/2009 ***I got information while in our office from our Informers*** *who*

phoned us that among those who invaded the mine is called Mawazo Saliboko"

The Informer went on informing the said Sergeant PW23 that Mawazo Saliboko had already sold the gold to Mwanagandila the 15th respondent at Kahama. The Informer told him further that Mawazo Saliboko was by that time arrested for another offence and was incarcerated at Geita police but had changed his name by using the name of Peter Mashaka. The informer further alerted them that the said Peter Mashaka who was in fact Mawazo Saliboko was on the process to be released on bail. Having been so informed PW23 and his fellows hurried and communicated with their fellows at Geita and finally re-arrested Mawazo Saliboko, the 1st Appellant herein. Upon interrogating him according to PW23 he confessed to have participated in the commission of the crime and mentioned his companions to be Edward Bunela, Daud Bunela, Masalu Chilu, Pius Mabula, Peter Zindoro, Kulwa Makole and Mabula Makole. Further accused persons were arrested as information were further being received. One of those who were arrested was PW14 Saidi Salum Kimwaga but on untold manner he was released and changed into being the prosecution witness.

In his evidence, this witness testified that on 22/04/2009 he received a phone call from the 2nd Appellant who is also the 4th respondent Edward Bunela @ Nuru for him to find out customers for buying gold as he had gold for sale. He then communicated to Mwanagandila the 15th respondent for him to buy such gold.

Thereafter he connected the seller (Edward Bunela and his fellow three others) and the buyer (Mwanagandila). The buyer and the seller started negotiations of the sale and purchase price

between Tshs. 400 million and Tshs. 200 million but reached an agreement at Tshs.350 million.

After they agreed the purchase price, the 4th respondent Edward Bunela remained at the office of the buyer and himself (Saidi Salumu Kimwaga), Makono (one of the buyer now the deceased) and two of the sellers left for getting the gold to the buyers. That they used Mwanagandila's vehicle make RAV 4.

This witness went on that they went up to Highway guest house where the two people got in and came out with a bucket of ten litres which had the gold inside. They came back with the gold whereas the buyer paid an advance of Tshs. 40 million. On the next day Tshs. 280 million were paid whereas the balance was to be paid after one week.

He went on that he was given Tshs. 27 million by the sellers for the job he did. Thereafter Mwanagandila and Makono were arrested. He met Edward, Shabani and Paschal at Mwanza who told him that Mawazo Saliboko is as well arrested. They thus agreed to escape to Dar Es Salaam to avoid the arrest and they jointly escaped as agreed.

The evidence of this witness as reviewed supra tends to corroborate the information received by PW23 from his informer because he identified the 1st Appellant/respondent Mawazo Saliboko as one of those people who were active in the business of selling the gold to Mwanagandila.

In that respect therefore, the only evidence by the prosecutions incriminating the respondents in the DPP's appeal is categorised into four pieces;

i. The information obtained from the police informer.

ii. The evidence of PW14 Saidi Salumu Kimwaga who acted as a middle man in selling the alleged stolen gold by the 1st and 4th respondents together with their fellow others to the 14th and 15th respondents.

iii. Cautioned statements of the accused persons now appellants/respondents.

iv. Extra judicial statement of David Charles Ndaki the 7th Appellant and 10th Respondent

At the end of the day, the appellants herein were convicted on the strength of the cautioned statements and the extra judicial statement alone. The first two categories supra did not form the basis of their conviction. However the learned Senior State Attorneys at the hearing of this appeal referred to the evidence on record generally including that of PW14 Saidi Salumu Kimwaga to convince this court that they had strong evidence to warrant the convictions of the respondents. The Appellants also at the hearing of this appeal faulted the evidence of PW14. Mr. Hebel Kihaka learned Senior State Attorney finally invited this court to revisit the prosecution evidence and find out the strength of their complaints. To fortify such invitation he cited to me the case of ***Prince Charles Junior versus The Republic, Criminal Appeal no. 250 of 2014*** CAT at Mbeya in which it was held that the first appellate court has jurisdiction to re-evaluate the evidence on record and come out with its own decision. I accept the invitation and will determine the merits or otherwise and probative value of each of the four categories supra.

Starting with the information from the Police Informers, we have no law in place authorizing the court of law to act on information received by the Police from their Secret Informers. That is because anything the Police Officer is told by his Informer turns to be hearsay evidence when he speaks it out. Such evidence is prohibited under our laws for it goes contrary to the rules of evidence that requires direct evidence from witnesses as provided for under section 62 (1) (a), (b), (c), and (d) of the evidence Act, Cap 6 R:E 2019 which provides that oral evidence must, in all cases whatever, be direct. That is to say; (a) if it refers to a fact which could be seen, ***it must be the evidence of a witness who says he saw it;*** (b) if it refers to a fact which could be heard, ***it must be the evidence of a witness who says he heard it;*** (c) if it refers to a fact which could be perceived by any other sense, or in any other manner, ***it must be the evidence of a witness who says he perceived it by that sense or in that manner;*** (d) if it refers to an opinion or to the grounds on which that opinion is held, ***it must be the evidence of the person who holds that opinion or, as the case may be, who holds it on those grounds:***

We have several authorities prohibiting the use of hearsay evidence to incriminate an accused person. For instance in the case of ***Masoud Mgosi versus Republic, Criminal Appeal No. 195 of 2018*** the Court of Appeal held that hearsay evidence is incapable of incriminating an accused person of the charged offence.

In the instance matter as per evidence of PW23, it seems the Informer was well acquainted with the crime, the manner it was committed, the persons who committed it, the place the gold was sold, the change of names by the 1st Appellant/respondent Mawazo

Saliboko, the place and location where such accused was at the time of giving his information, etc.

Despite of such detailed information from such informer, the value thereof is nothing but just **"hearsays"** incapable of incriminating the accused persons now the Appellants.

In the case of ***Idrisa Hamis and James Kanaku versus the Republic, Criminal Sessions Case No. 34 of 2020*** this Court at Kigoma, I took the following stance which I find it better to take again in this case;

"Investigators are called investigators because their role is to investigate offences and collect all potential evidence to prove or disprove the allegations registered before the Police Station. ***They should not relax on the information obtained on the so-called informers*** *without verifying them by collecting independent evidence through the information obtained. Courts of law will never convict a suspect on allegations that the Police informer named him* ***even if it is stated that such informer saw the accused committing the offence in the broad day light and that they are familiar to each other.***

In the circumstances, the informer would be necessitated to turn into being a witness and be physically available in the witness dock to be subjected to cross examination by the accused person or his advocate and for the Court to assess his or her credibility and reliability.....what if it was that informer the actual perpetrator of the crime!"

I still stand on such findings that in the absence of an independent evidence to incriminate the suspect, the information obtained by the police from informers are valueless unless they are turned into being witnesses and stand in the witness dock to undergo the process of examination of witnesses.

This is because as a fact of life, sometimes crime doers would like to blindfold the Police from detecting them of the crimes they have committed by pretending to be informers fabricating innocents into their own crimes. The real example is not far to fetch. In the case of ***The Republic versus James Kaliwa @ Mazi, Criminal Sessions Case No.18 of 2020*** in the High Court at Shinyanga, it was the Police informer of a murder incidence who was the actual murderer.

James Kaliwa @ Mazi (the police informer) approached the Police purporting to tip them that his friend deals with trafficking in human body parts (viungo vya binadamu) and volunteered to let the Police know when his friend would be in physical possession of the body parts.

Some days later he phoned the Police and informed them that his friend has already brought at his home two arms of human being ready for his illegal business. He took the Police at the homestead of his "friend" while undercover and pointed out the bag on the top of the outer toilet thereat. He then took his way leaving the Police to do their job.

Police Officers made the search and managed to seize two fresh human arms as rightly tipped by their "informer". They then arrested the whole family at the homestead and incarcerated them

behind bars. Such family members were really astonished of the arms being found at their homestead.

In the course of interrogation, they revealed that the only person they could suspect to have planted them the arms, was James Kaliwa @ Mazi because of serious grudges between them.

The names of James Kaliwa @ Mazi having been named triggered the memory of the Police that such named person was their actual informer who led to the discovery of the said arms. They thus phoned him so that they could make some thorough interview but he escaped them. After some efforts were made, he was arrested and on being interviewed he confessed to have murdered a person and planted the arms to the homestead of his "friend" so that he would be arrested, tried, convicted and die in jail for him to take and use some cows he alleged to be owned by his wife whom he married after she divorced from his "friend" after all attempts to take away the cows from his "friend" had ended in vain.

He led the Police to the discovery of the remaining body far away in the bush and the DNA report confirmed that the two arms belonged to the recovered body. The innocent family who were incarcerated for a month were then released. The informer (James Kaliwa) was then arraigned, convicted and sentenced to suffer death by hanging.

With this live example, we will never convict any accused on mere information from Police informers. Their respective information should assist Police Officers to collect independent evidence that would stand alone against the suspect.

In that respect the alleged information from Police informer in the instance matter are useless and accordingly dismissed to avoid possible prejudices when assessing the remaining evidence.

As about the evidence of PW14 Saidi Salumu Kimwaga, the same is the evidence of an accomplice witness. If his evidence is to be believed, he was then a middleman to the illegal transactions of the gold. He stood not only as a linking person but as an active participant in the business when he was one of the team which went to take the gold from Highway guest house to the buyer's office, he was given a share of Tshs. 27,000,000/=, he escaped the arrest after having heard that some fellows were under arrest. He was thus an accomplice witness.

As a matter of principle, the evidence of an accomplice witness needs corroboration for it to be acted upon against an accused. However, a conviction is not necessarily illegal for being founded on an uncorroborated evidence of an accomplice. See; ***Godfrey James Ihuya and another versus Republic (1980) TLR 197.***

In the instant matter, taking the conducts of PW14 into a thorough consideration as revealed supra, I find it that his evidence cannot stand alone to convict. It requires corroboration. I cannot take justice at risk to the detriment of the appellants. The only corroboration to his evidence in the instant case is the cautioned statements of the accused persons themselves which the learned Senior State Attorneys relied much as a true evidence against the respondents. I will come to such cautioned statements later. Let me finish with the evidence of PW14.

My thorough scrutiny of the evidence of PW14 finds out that he was incredible and unreliable. This is because in his evidence he

did not disclose his business relations with 14th and 15th respondents until when he was cross examined by advocate Outa.

During cross examination it is when he admitted to possess Jewellery business at Kahama adjacent to the 14th and 15th respondents and that he used to do gold business with them wherever he got a client in need to sale his gold.

The 14th and 15th respondents in their respective defences mentioned PW14 as a person who sold to them 12 kilograms of gold at Tshs. 270 million. If we have to believe them, then it was PW14 the owner and seller of the gold and not the Appellants or respondents herein. In that respect the possibilities that PW14 in this case Saidi Salumu Kimwaga was just another "James Kaliwa @ Mazi" cannot be overruled.

Therefore, the danger to act on his evidence alone without being corroborated is apparent. Even the trial Court did not put reliance to his evidence, I also do the same. In fact our Superior Court in this Country has several times warned us of the danger of acting on evidences of witnesses who sometimes seems to give convincing evidence but at the same time lies or with the honest belief mistaken. See; ***Festo Mawata Vs Republic Criminal Appeal No. 299 Of 2007*** in which the Court of Appeal held;

> *"A witness might appear to be perfectly honest but mistaken at the same time.* ***On the other hand it is a fact of life again that even lying witnesses are often impressive and or convincing witnesses"***

The remaining incriminating evidence against the Appellants and on the other hand against the Respondents in this case are the

cautioned statements of the respondents themselves together with the extra judicial of one of them.

In their respective written submissions against those cautioned statements the appellants/respondents argued that such statements were procured out of the legally prescribed time under section 50 and 51 of the CPA, and that they were procured after severe torture.

They argued that the 1st appellant/respondent's cautioned statement (Mawazo Saliboko) exhibit P19 was recorded on 03/05/2009 at 11:37 hours despite the fact that he was formerly arrested for the purpose of this case on 01/05/2009 in the morning hours as per evidence of PW23. That was over and above 48 hours. It was further argued that even taking the movements allegedly made by the Police along with the 1st appellant/respondent for purpose of investigation and exclude the time of such movements, they finished such movements and returned the 1st appellant/respondent at Police Nzega on 02/05/2009 at 03:00 hours yet his statement was recorded on the next day after 32 hours.

The appellants/respondents in respect of the cautioned statement of Shabani Mohamed Amour exhibit P83, they submitted that such statement was recorded by PW47 on 11/06/2009 at 13:30 hours at Stakishari Police in Dar Es Salaam but his arrest was on 10/06/2009 at 21:00 hours.

They further submitted that Aloyce Daudi @ Peter Zindoro and Pius Mabula @ Kulwa Shija whose cautioned statements are exhibits P78 and P21 respectively are nowhere to be seen as evidenced by the affidavit of the Deputy registrar one Beda Robert

Nyaki. Nevertheless, they argued that the evidence on record can and suffices to determine the legalities of such cautioned statements.

They argued that the records of the trial court shows that these two appellants/respondents were arrested on 05/07/2009 at 02:00 hours as per evidence of PW28 and PW48. Their cautioned statements were however recorded on diverse dates. PW37 recorded the cautioned statement of Aloyce Daudi on 07/07/2009 at 12:00 hours while PW25 recorded that of Pius Mabula on 09/07/2009 at 14:45 hours.

In respect of the cautioned statement of Frank Selemani Kabuche exhibit P22 he submitted that the same was recorded on 13/03/2010 while he was arrested on 08/03/2010.

In respect of the cautioned statements of Edward Bunela @ Nuru, John Paschal @ Charles Ndaki and David Charles Ndaki exhibits P37, P82, and P18 respectively, they argued that Edward Bunela as per record was arrested on 06/06/2009 at 06:45 p.m but Inspector Twaha PW34 recorded his cautioned statement on 07/06/2009 at morning hours.

In respect of John Paschal Charles Ndaki, they submitted that PW47 Insp. Julieta Lyimo recorded his cautioned statement on 07/06/2009 while his arrest was on 06/06/2009 at morning hours as per evidence of PW47 supra.

In respect of the cautioned statement of David Charles Ndaki, they submitted that his cautioned statement as per evidence of PW23 D/Sergeant Laurent was recorded on the 05/11/2009 at about 11:30 a.m while he was arrested on 04/11/2009.

From such submissions of the appellants/respondents as extracted from their respective written submissions, the common complaint is that their respective cautioned statements were recorded out of the prescribed time of four hours in terms of section 50(1)(a) and 51 of the CPA.

The respondent/DPP's reply to such complaint as per written submission filed by Mr. Rwegira Deusdedit learned Senior State Attorney, is that the delay was explainable for there were some movements from here and there in respect of Mawazo Saliboko.

He contended that the cautioned statement of Edward Bunela was recorded in time, that of David Charles Ndaki had a delay of one day but the delay was justified because the accused was on transits from Mwanza where he was arrested to Shinyanga, in respect of the cautioned statement of Shabani Mohamed Amour the delay in recording his cautioned statement was argued to be traffic jam within Dar Es Salaam city at the time he was conveyed to Police Station.

From the submission of the DPP, it is obvious he admits that apart from the statement of Edward Bunela, all other statements were recorded out of the prescribed four hours. He however tried to justify the delay by explaining that there were several movements of the accused persons in the course of investigation or conveying them from one place to another.

I first agree with the learned State Attorney that if there is a plausible explanation by the prosecution for the delay to record the cautioned statement of an accused person, the delay would normally be excused.

I however stand far away to agree with the learned State Attorney that there were plausible explanations for the delays in recording the cautioned statements of the accused persons in the instant case. **Plausible explanations** for the delay to record the statement of the suspect is expected to come from the evidence of the recording Officer himself as to why he did not record the statement in time or from the relevant Officer who delayed to cause the statement to be recorded in time.

We don't get plausible explanations for the delay from the bar by reasoning and arguments of the State Attorney in his submissions because such submissions of an Attorney are not evidence worth to be acted upon. The same are made without oath or affirmation and are not even subject to cross examination by the opponent party. The submissions would only be arguments to cement the already available explanation by the witness himself.

In the instant matter I did not see any of the recording Officers giving explanations for the delay to execute such duty of recording the disputed statements. Some purported to justify the delay during inquiry proceedings. That was wrong because recording of statements of suspects is a legally guided process and the justification of any delay must be made in the evidence in chief and not on an inquiry proceedings which is only for the purposes of determining voluntariness or otherwise of the statement.

In that respect the statements were illegally obtained by contravening the law stated supra.

In respect of the statement of Edward Bunela @ Nuru purportedly recorded in time just one hour after his arrest as argued by the learned Senior State Attorney, I have failed to grasp

the learned State Attorney's submission. At page 11 of the written submission the learned State Attorney acknowledges that Edward Bunela was arrested on 06/06/2009 at 22:04 hours but his statement was recorded at 09:45 hours which is just the next day 07/06/2009 as exhibited by the cautioned statement itself. I have failed to know how the learned State Attorney calculated the hours to get out that the statement was recorded within four hours.

From 06/06/2009 at 22:04 hours to 07/06/2009 at 09:45 hours is almost 12 hours which is extremely out of the prescribed period of four hours. I therefore find this statement to have been as well recorded out of the prescribed time in law.

Unfortunately, this legal issue was not given or accorded the weight it deserved. When the same was raised along with the grounds of torture, only torture was worked upon by the trial court to undergo inquiry proceedings. Objections taken under various provisions of the CPA to the admissibility of cautioned statement is not determined by inquiry proceedings. See; ***Nyerere Nyague versus The Republic, Criminal Appeal No.67 of 2010.***

Determination of the reasons for the delay through inquiry proceedings is thus prejudicial to the accused whose statement is sought to be admitted in evidence because it would be a giving of chance to the prosecution to justify the delays by way of afterthoughts.

Any delay must be justified by the evidence of the witness before even seeking to tender the statement in evidence. That is what was held in the case of ***Robinson Mwanjisi and 3 others versus The Republic (2003) TLR 218*** to the effect that the document must be cleared for its admission before it is formerly

admitted in evidence. The rationale behind is to avoid prejudicing the mind of the bench by the contents of the document which might be exciting (sisimua) to the extent of persuading the court to admit the illegally obtained document.

In the instant matter the recording Officers did not clear the delays in recording the statements. They purported to do so after the objections were made which is contrary to the guiding principles for admissions of documentary evidence as per Robinson Mwanjisi's case supra. The said cautioned statements were thus inadmissible.

Even though, the law is settled that even when the cautioned statements are admitted without objection the Court should treat them with circumspection regard being on the peculiar circumstances of the case.

In the circumstances that the conviction of the appellants in this case rested solely on their respective cautioned statements, the trial court ought to have treated such statements with circumspection despite the fact that it had finally admitted the same in evidence, more so when they were repudiated.

That is because admission of cautioned statements in evidence does not automatically form the basis of conviction because admissibility is one thing and its applicability and reliance is another thing. See; ***Ndalawa Shilanga and another versus The Republic, Criminal Appeal No. 247 of 2008*** (CAT).

For cautioned statements to be ruled out that they contain nothing but only the truth so that to be safely acted upon to convict, the same must not contradict on the material issues.

If it happens that the cautioned statements are at variance on material issues, they cannot be said to have contained the truth

only because in no way the statements which varies and contradicts to each other can be treated to have contained nothing but the truth.

Now, do the cautioned statements at hand coherent and consistence on the material issues relating to the crime? Let them speak out by their own.

Let us start with the number of bars or blocks of gold stolen. According to the charge sheet it was six bars and a half. That goes mutatis mutandis with the cautioned statements of Daud Charles Ndaki, Jummanne Nshimba @ Lubibi Nindilo and Mawazo Saliboko.

On the other hand the cautioned statements of Edward Bunela @ Nuru, Shabani Mohamed @ Amour, John Paschal Charles @ Ndaki and Pius William Mabula @ Kulwa shows that the appellants in confessing the crime stated that they stole only six bars.

Under the circumstances the cautioned statements are at variance as to the number of bars/blocks of gold they stolen. They cannot be treated jointly to have all stated nothing but the truth. One group must have lied in their respective cautioned statements.

At this juncture we are not better positioned to rule out which group recorded the truth. If we have to believe Mawazo Saliboko, Jumanne Nshimba and Daudi Charles Ndaki that they stole 6 ½ bars of gold because the charge sheet reflects as such then the cautioned statement of Edward Bunela and his fellows must be treated to contain lies. The opposite is as well true.

Also on the aspect relating to who exactly entered in the **strong room** at the crime scene for the purposes of taking the gold out, the cautioned statements are at variance. While Shabani

Mohamed Amour is recorded to have named himself, Edward Bunela, Paschal Ndaki and Frank Selemani Kabuche as persons who entered in the strong room, Daudi Charles Ndaki excludes Frank Selemani Kabuche. In the circumstances it can't be said that both Shabani Mohamed and Daudi Charles Ndaki recorded only the truth for they are not in agreement on whether Frank Selemani was one of those who entered into the strong room to take the gold. One of them must have lied in the cautioned statement.

Not only that but also Edward Bunela and Mawazo Saliboko are at variance on who exactly went to sale the gold.

While the cautioned statement of Edward Bunela states that it was him (Edward Bunela), Saidi Kimwaga and one Jijima who went to sale the gold, the cautioned statement of Mawazo Saliboko shows that it was Edward Bunela and Saidi Kimwaga alone who went for the business. Should we treat the two cautioned statements that they both contain the truth in that aspect? Obvious not, one must have lied in the statement.

Even the weight of gold sold to the 14th and 15th respondents is at variance to their respective cautioned statements. While Makono Maganyala Kaniki stated in his cautioned statement that they weighed the gold at 21.4 kilograms, his fellow Marko Ndosela Mwanagandila stated that they weighed it at 22 kilograms.

If at all their respective cautioned statements contains nothing but only the truth, why all these variances on such very important material facts.

Even when the statements are scrutinized on how the thugs distributed the stolen gold among themselves, there are untold variances. Mawazo Saliboko stated in the cautioned statement that

himself, Edward Bunela, Aloyce Peter Zindolo, Masali Chilu and Pius William Mabula took one bar and the rest five bars were taken by Daudi Bunela and others who took them to Mzee Bunela.

Pius William Mabula @ Kulwa on his part is recorded to have stated in the cautioned statement that the division of the bars/blocks were in four groups as follows; **First group** comprising of Mawazo Saliboko, Aloyce Peter Zindolo, and himself (Pius William Mabula) took one bar/block. **The second group** comprising one Ndaturu and another took one bar. **The third group** comprising Edward Bunela, Daudi Bunela and one Afande from Dar Es Salaam took one bar/block. **The fourth** group comprising Shabani Mohamed Amour and other took two bars/blocks.

In accordance to the two statements of Mawazo Saliboko and that of Pius William Mabula @ Kulwa there is no agreement to the manner the distribution of the bars/blocks was done.

According to the statement of Mawazo Saliboko, he was in the same group with Edward Bunela and Masalu Chilu who got one bar but Pius is recorded to have stated that Edward Bunela was in his own group together with Afande and Daudi Bunela who also took one bar/block.

Again while Mawazo Saliboko stated in the statement that five bars/blocks were taken by Daudi Bunela and others to one Mzee Bunela, Pius William Mabula to the contrary did not state as such but were distributed into four groups as reviewed above.

Not only that but also If Mawazo Saliboko stated that they stole six and a half bars/blocks, why in explaining the distribution his statement does not cover the half bar. He is accounting for only six bars/blocks. His statement is suspicious as to whether he

explained what he really knew as the truth or he was just serving a hidden purpose.

But again Edward Bunela on his part is recorded to have stated that the distribution was in two groups. The first group got two bars/blocks which comprised himself, Mawazo Saliboko, John Paschal Charles Ndaki, David Charles Ndaki, Pius William Mabula and Ndaturu @ Mbunge who took two bars while Shabani Mohamed Amour and the rest took four bars.

From such statement, while Edward tells us that Shabani and others took four bars, Pius William Mabula stated that Shabani and others took only two bars. The statement of Edward Bunela contradicts that of Mawazo Saliboko as well on the distribution.

The contradiction is also seen in the statement of Shabani Mohamed Amour who is recorded to have stated that the distribution was in four groups but contrary to the four groups stated in the cautioned statement of Pius William Mabula.

David Charles Ndaki also mentioned six groups in which the gold was distributed whereas he himself and his relative John Paschal Charles Ndaki took one bar/block, Edward Bunela and his relatives took one and a half (1 ½) bars/blocks, Shabani Mohamed Amour him alone took one bar/block, Daudi Bunela him alone took one bar/block, Mawazo Saliboko and his friends took one while Mbunge took also one.

With the herein above contradictions on how the blocks were distributed among themselves, we cannot rule out that the cautioned statements contained nothing but only the truth.

Unfortunately, there is no any evidence in the prosecution case to reconcile the variances. As we have seen some statements

are accounting for only six blocks while one of them accounted for six and a half blocks.

I cannot see if the appellants/respondents really confessed and gave the true accounts of the crime. Had they been truly intended to confess they could not be at variances on the process throughout the crime which is central fact of the case.

Even from the buyers; the 14th and 15th respondents, we find that they are at variances of the gold they bought. While Makono Maganyala Kaniki (14th) is recorded to have stated in his cautioned statement that at the time of buying the gold, they bought it in one complete block but it was them who cut it into pieces by using what he termed as "gesi ya moto" for them to melt it to satisfy themselves whether it was a pure gold, his companion the 15th respondent Marko Ndosela Mwanagandila is recorded to have stated that they bought gold which was already into pieces in the meaning that the gold brought to them for purchase was not a block but just pieces. The question is who spoke the truth between the two?

Should we say they both spoke the truth? If not which statement is to be relied as against the other.

Not only that but also the sale/purchase price and the advance payment is a contradicted version between cautioned statements. While Edward Bunela stated that the sale price was Tshs. 350 million in which they were advanced 40 million, the 14th and 15th respondents in their respective statements are recorded to have said the purchase price was Tshs. 270,000,000/= and they advanced only 30 million. The inconsistences in the statements go further even to the number and list of perpetrators who met at Fantom Petro Station to plan the crime. The contradiction is also on

the total numbers of the thugs who went to the crime scene to execute the robbery. While Edward Bunela and Shabani Amour are recorded to have said they were fifteen (15), Mawazo Saliboko and Pius William Mabula on their part states that they were only ten (10).

In the case of ***the Republic versus Emmanuel Sayi @ Nwari and 4 others, consolidated Criminal sessions case No.12 of 2018 and No.30 of 2020,*** HC at Shinyanga, the court after having analysed the inconsistences in the accused persons' cautioned statements was obliged to answer the posed question by the defence in that if really the accused persons intended to confess, why couldn't they be consistent in their respective cautioned statements about the crime. The court held at page 42 that in the absence of another evidence to corroborate the statements it is very dangerous to act on the inconsistent statements to find the guilty of the accused persons.

Furthermore, the statements were retracted and or repudiated on the grounds of torture, force, coercion threats, and promises. That necessitated the trial court to undergo inquiry proceedings in each and every statement.

Some of the accused persons managed to tender in evidence their respective PF3's and medical reports and others attempted to put in evidence their PF3's but faced some objections and failed to tender them.

For those who managed to tender their PF3, the record shows that they sustained some injuries, pains on the knees and difficult in hearing. See the PF3s of Edward Bunela, Shabani Mohamed

Amour, Jumanne Nshimba @ Lubibi Nindilo and David Charles Ndaki exhibits D1, D2, D4 and D5 respectively.

These medical documents are speaking untold sufferings the Appellants suffered. That for instance, the PF3 of David Charles Ndaki shows that he was harmed on the right knee by a cut wound measuring 4cm length and 2cm depth, he had a cut wound and anal tear measuring 2cm length and 1cm depth. The doctor recommended that the wounds sustained were dangerous. Even those whose medical evidence were technically rejected at least demonstrated some evidence to the effect that they were really subjected to torture.

This is because every recording Officer of the cautioned statements stated that at the time of recording the said statements, the accused persons were physically okay and mentally fit. They had no any health problems. If that was the case, at what time and point they sustained such injuries, pains, difficult in hearing and knee joint harm. At what time David Charles Ndaki's anal was tore or scratched as exhibited in his PF3!

The prosecutions should have accounted for wounds sustained by the accused persons, more so, when the accused persons were not released at any time from when they were arrested in their good health.

The evidence on record generally demonstrates unusual treatment of the accused persons leading them to suffer as indicated in the PF3s.

In the absence of explanations from the prosecution side for such untold sufferings, the averments of the accused persons that they were subjected to torture so that they confess cannot be

overruled. In fact the findings of the doctor that David Charles Ndaki had his anus tore corroborates his own evidence at page 408 of the typed proceedings that the police inserted into his anus a coca cola bottle which pained him until he fell unconscious.

In the case of ***Stephen Jason & Others v. The Republic, Criminal Appeal No.79 of 1999*** (unreported) the Court of Appeal gave a serious consideration on statements of suspects procured out of torture. It held that:-

> *"Where an accused claims that he was tortured and is backed by visible marks of injuries it is incumbent upon the trial court to be more cautious in the evaluation and consideration of the cautioned statement even if its admissibility had not been objected to; and such cautioned statement should be given little if no weight at all".*

Such holding was repeated in the case of ***Hamis Chuma @ Mhando Mhoja versus The Republic, Criminal Appeal no. 36 of 2018*** CAT. The defence case of the accused persons now the 1 to 8th appellants and that of all respondents in this case casted reasonable doubts against the prosecution case.

Lack of corroborations to their respective cautioned statements lowered the value of such statements. The recording of such statements out of the prescribed time in law and with the available evidence by the defence side that they were subjected to torture invalidates such statements even if they might be containing the truth. That is the position taken by the Court of Appeal in the case of ***Pascal Petro Sambala @ Kishuu and Two Others v. The Republic, Criminal Appeal No. 112 of 2005*** in which the Court

held that since the cautioned statements of the second appellant was obtained through torture, it should not have been admitted in evidence **regardless of its truth.**

With the herein above analysis about torture the Appellants/Respondents sustained while they were under custody of the Police officers and by the guidance of the Superior Court as herein above quoted, I cannot base the convictions of the Respondents on their respective statements nor can I sustain the convictions entered against the 1st to the 8th Appellants because of such statements which in law were inadmissible.

I find it imperative to remind police investigators to what I previously stated in the case of ***The Republic versus Idrisa hamis and James Kanaku, Criminal secessions case no. 34 of 2020,*** High Court at Kigoma that;

> *"The investigator who carries suspicious facts/information of individuals and* ***Cautioned statements of accused persons*** *which does not have an automatic admissibility in evidence as the only evidence to prove his case, is like a soldier who equips himself with an empty gun which has no magazine nor bullets and yet expect to fire his enemy to death. That soldier is going to die shamelessly in the battle field without even inflicting a minor injury to the enemy. Nor he deserves any honour in his burial ceremony. The caution statement is like the empty gun, other independent evidence like DNA profiles, exhibits connected to the offence which have been recovered from the accused, etc. acts as live bullets, and collections of such evidences in the proper manner as directed in the*

relevant law governing a specific investigation is like the magazine. Ignoring any is to ignore the whole case".

In the instant case the prosecutions stood in court in affectations with only cautioned statements of the accused persons and an extra judicial statement of the 10th Respondent David Charles Ndaki whose anal was tore without any explanation.

It is my humble observations that the accused who freely confesses to the crime would lead a brave and vigilant investigator to collect other independent evidence against him which might stand alone against him even without using such statements in evidence.

Also, investigators should not relax on the confessions of accused persons, particularly in this era where there is a general cry of the general public against police officers that suspects of crimes are always subjected to torture to procure their confessions. Even the enacted law section 27 (1), (2), and (3) of the Evidence Act, Cap. 6 R.E 2019 put it clear that confessions to Police Officers are presumed to have been involuntarily obtained unless proved otherwise and it is the prosecution to prove that such confessions were in fact voluntarily made. Such provision provides;

*"(1) A confession **voluntarily made** to a police officer by a person accused of an offence **may be proved as against that person**.*

*(2) The **onus of proving** that any confession made by an accused person **was voluntarily made** by him shall lie **on the prosecution.***

A confession shall be held to be involuntary if the court believes that it was induced by any threat, promise or other prejudice held out ***by the police officer to whom it was made*** *or by* ***any member of the Police Force*** *or by any other person in authority".*

Police officers investigating offences should always be aware of this provision. They are suspect of torture by both the general public and the law. They should thus not rest in their investigations merely because they have already obtained cautioned statements from the suspects. I made this similar observations in the case of Idrisa Hamis supra quoting the case of ***The Republic versus Lazaro Elias @ Robert Patrick Mbawala Criminal Session Case no. 13 of 2020*** of the same court in which the prosecution case rested on the detailed cautioned statement obtained in untold manner from a completely insane accused person who was not able even to follow the proceedings. The accused who was established by medical evidence that he was completely insane not only at the time of his examination of his mental status but also at the time of the alleged crime. From this insane person yet the Police officer procured a well detailed cautioned statement. Under these circumstances, cautioned statements are not good evidence unless they were procured in accordance to the guidelines under the CPA and pass all tests of voluntariness.

Investigators should thus take opportunity of confessions to collect independent evidence that would corroborate the confessions during trial and or stand-alone against the suspects.

In the final analysis and for the reasons stated herein above I find that the cautioned statements of the accused persons are not

wealthy to ground the convictions of the appellants/respondents. They were recorded out of time, they are inconsistent to each other on the material facts of the crime, and they were procured out of torture, threats, coercion, promises and force. I proceed to expunge such illegal evidence from the records.

Having so expunged the cautioned statements, there remains an extra judicial statement of the 7th Appellant who is also the 10th Respondent herein. Without dwelling much in it, the same is liable to be expunged because it was recorded in contravention of the Chief Justice's guidelines to Justices of the peace. PW15 Yolanda Malya the Justice of the peace who recorded such statement was honest in her evidence that she did not inspect the body of the accused to see if he had no any fresh wounds. Instead she sent one Waziri the office attendant to check the accused who in turn informed her that the accused was okay without any wound.

That was a clear violation of the Chief Justice's Guideline which requires the Justice of the peace **in person** to examine the accused's body unless the accused does not consent to such physical examination of his body whose purpose is to observe and establish the real condition the accused had at the time of giving his statement. That is in accordance to paragraph 6 of the Guidelines which provides;

> *"(6)* ***I have,*** *with the consent of the prisoner, examined his body.* ***The result of my examination*** *is as follows: ....."*

It doesn't matter whether the Justice of the peace is a female and the accused is a male. To rule otherwise it would mean female Magistrates or female Judges would not be able to adjudicate cases involving male accused persons in which part of the evidence to be

recorded comes from physical observations of the body including even private parts. In any case if the Justice of the peace finds that she or he cannot execute her duty thoroughly the available option is to direct that the accused be taken to another Justice of the peace and not to delegate her powers to other people who are not appointed as Justice of the peace. Had she executed her duties to the required standards under the guidelines she would have discovered that the accused before her was seriously wounded as per the PF3 supra.

I have carefully examined the extra judicial statement in question and found that physical inspection was not the only violated guideline. Several other guidelines were as well violated. That for instance, paragraph 3 of the Guide requires the justice of the peace to direct the police officer to leave away not only from the chamber of the justice of the peace but also in any other place that might cause him or her to hear the conversation between the accused and the justice of the peace. The justice of the peace is required to satisfy himself or herself that the proceedings therein are not seen or heard by anybody and record as such. The same provides;

> *"(3) The prisoner is placed in the custody of ..... and the police are directed to leave the premises.* ***I am satisfied that there is no police officer in this office nor in any place where these proceedings can be seen or heard".***

In the instant matter the extra judicial statement at hand show that D/CPL Abas who brought the accused before the justice of the peace was asked to leave the premises. But it is silent as to whether the said police left as directed and or he went at the distance in

which he could not see or hear the conversation inside the justice's office.

Another violated guideline is paragraph 5 of the Guide which provides;

> *"(5)* ***The prisoner is informed that he is before a Justice and asked if he wishes to say anything. He replies, "Yes" I wish to say something"*** *(if the prisoner replies "No" he should be returned at once to police custody)".*

In the instant extra judicial statement, it is not reflected whether the accused was informed that he was before the justice of the peace. He was not asked if he really wanted to say anything. Therefore he gave his statement perhaps knowing that the justice of the peace before him was a police officer. Need not to reflect all the problems in the statement. Suffices it to say; such statement has no any evidential value. It cannot be acted upon to ground the conviction. To that end, I find that the witness PW15 violated the mandatory Chief Justice's guidelines.

In the case of ***Japhet Thadei Msigwa Vs. Republic, Criminal Appeal No. 367 of 2008*** it was held that justice of the peace must **strictly comply** to the Chief Justice's Guidelines because they tend to enable the trial court to know the surrounding circumstances under which the statement was taken and decide whether or not it was given voluntarily.

I therefore reject the extra-judicial statement for having been illegally obtained and accordingly expunge the same from the record.

Up to this juncture, the prosecution case is now lacking any oxygen to breathe through. I am not an expert to revive a dying case. What I can only do, is to rest it in peace.

The respective appeals by the Appellants as herein above consolidated are hereby allowed. Their respective convictions are quashed and the sentences meted against them in both counts are set aside accordingly.

In that respect, the DPP's appeal against them fails and is hereby dismissed accordingly.

Since the evidence relied upon by the prosecutions to prove the counts of money laundering were the Cautioned statements of the accused persons, and since such evidence is no more existing on record, the question as to whether such kind of offences can stand alone and be proved against an accused person in the absence of there being a charge and conviction on a predicate offence cannot be determined in this appeal because any attempt to determine such question would be for academic purposes without any useful purpose in the instant appeal. That applies to all other complaints by the DPP because they depended on the expunged Cautioned Statements.

It is hereby ordered that the appellants Mawazo Saliboko @ Shagi, Edward Bunela @ Nuru, Shabani Mohamed Amour, John Paschal Charles Ndaki, Pius Wiliam Mabula @ Kulwa, Aloyce Peter Zindoro, David Charles Ndaki and Frank Selemani Kabuche be released forthwith from custody unless otherwise lawfully held. I further order that their respective properties seized by the police officers and tendered as exhibits should be returned back to each respective owner including those who were acquitted during trial.

There is no evidence whatsoever that establishes that the Appellants/respondents acquired such properties illegally or that they were proceeds of a predicate offence.

Whoever aggrieved with this judgment is hereby informed that he has the right to further appeal to the Court of Appeal of Tanzania subject to the guiding Laws and Rules thereto.

MATUMA

JUDGE

02/06/2023

Order:

Judgment delivered in the presence of Steven Mnzava and Joyce Nkwabi learned State Attorneys for the Respondent/Appellant (DPP) and in the presence of advocate Outa for the 15th Respondent Marko Ndosela Mwanagendila who is also present in person and in the presence of advocate Flavia Francis for the 12th respondent Frank Selemani Kabuche who is also present, and in the presence of the 4th, 6th, 10th and 13th respondents and there advocate Kashindye, and further in the presence of the 1st, 5th, 7th, 9th respondents in person. Right of further appeal is hereby explained.

MATUMA

JUDGE

02/06/2023