IN THE HIGH COURT OF TANZANIA

DAR ES SALAAM DISTRICT REGISTRY

AT DAR ES SALAAM

CRIMINAL APPEAL NO. 151 OF 2023

(Original Criminal Case No. 75/2022, District Court of Kibaha, at Kibaha (Hon. J. Lyimo, SRM)

MOHAMED MSHAMU MOHAMED……APPELLANT

VERSUS

THE REPUBLIC…… RESPONDENT

Date of Last Order: 10/11/2023

Date of Judgment: 14/11/2023

JUDGMENT OF THE COURT

KAFANABO, J.:

This is an appeal that emanates from the decision of the district court of Kibaha at Kibaha, (*Hon. J. Lyimo, SRM*) dated 21st February, 2023.

The appellant herein on 12th December 2022 was charged with two counts. The first count was rape contrary to section 130(1) and (2)(e) of the Penal Code Cap. 16 [R.E 2022]. It was stated that the appellant herein on 6th October 2022 in the Madina-Msangani area, within the Kibaha district, in the Coast region had unlawful sexual intercourse with GGT, a girl aged five years old.

On the second count, the appellant was charged with trafficking narcotic drugs contrary to section 15A(1) and (2)(c) of the Drugs Control and Enforcement Act, Cap. 95 R.E. 2019 as amended. The particulars of the offence are that on 6th October 2022 in the Madina-Msangani area, within the Kibaha district, in the Coast region, the appellant was found in possession of 427.60 grams of cannabis sativa commonly known as 'bhangi'.

The appellant was prosecuted and convicted on both counts and sentenced to serve imprisonment for life, pay compensation of Tanzania Shillings 1,000,000/= to the victim, and twelve strokes of the cane on the offence of rape. The appellant was also sentenced to serve 20 years' imprisonment on the charge of trafficking of narcotic drugs, and both sentences to run concurrently.

Being aggrieved by the decision of the district court the appellant appealed to this court armed with ten grounds of appeal. The said grounds of appeal are provided as follows:

1. That, your Lordship the learned trial SRM erred in law and fact by convicting the appellant while failure(sic) to determine that the prosecution charge was incurably defective omission(sic) to cite the

specific punishment provision is an inconsequential omission the inclusion(sic) of an inapplicable provision in the charge sheet involving an offence in which way he was prejudiced.

i. Worse still at page 14 line 3-4 in the copy of judgment, the learned trial Magistrate on the lack of the definition section in the charge sheet is wanting simply refers to section 130(2)(e) of the Penal Code did not state the details comprised in Section under which the appellant was charged.

2. That, your Lordship the learned trial SRM erred in law and fact by convicting the appellant relied on the discredited and unprocedural testimonies of PW1 a girl of tender age 11 years old, at page 5 line 9-19 and PW4 (the victim) a girl of tender age 5 years as at page 12, line 16-20 to page 13 line 1-7 that the trial court did not ask any preliminary questions to determine if PW1 and PW4 (the victim) understood the nature of oath or affirmation with the requirement under the provision of section 127 (2) of the Tanzania Evidence Act as amended by Act No. 4 of 2016 contrary to the procedure of law.
3. That, your Lordship the learned trial SRM erred in law and fact by convicting the appellant relied on the mere implication assertions of

PW1 and PW4 (the victim) which were full of discrepancies and contradictions the omission which created doubt and affected their credibility and reliability to ground any conviction.

i. Relied on the insufficient uncorroborated evidence of PW1 and PW4 in the lack of cogent evidence which(sic) linking the appellant with the charging offence.

4. That, your Lordship the learned trial SRM erred in law and fact by convicting the appellant relied on the un-procedural and discredited visual identification of PW1 and PW4 (the victim) at the locus in quo while the nature of intensity of light was insufficient for proper identification as it was merely stated by PW7 that we were able to see the accuse by using a torch n phones at page 20 last four lines which lack any justification on the identity of the appellant neither did they give any graphic description on the basis of which they identified or recognized the appellant as facial or morphological appearance coloring or physique and attire contrary to the procedure of law.
5. That, your lordship the learned trial SRM erred in law and fact by convicting the appellant relied on the (Parade Register) exhibit P1 at page 5 line 2 it was irregularly tendered by the Prosecuting State

Attorney it is certainly elementary that an exhibit can only be tendered into evidence but the witness testifying on it, not the examining counsel.

i. It is apparent that the prosecuting attorney made a step too far creating an impression that (he) was the person that actually tendered exhibit P1 at the trial.

ii. In tendering the report the prosecutor was actually assuming the role of a witness.

iii. While the trial court erroneously admitted exhibit P1 as exhibit in evidence as it failed to read over aloud before the trial court to ascertain its credibility before relied upon as a basis of conviction at page 5 line 2 contrary to the Procedure of law.

6. That, your lordship the learned trial SRM erred in law and fact by convicting the appellant relied on untenable and discredited testimony of PW9 (Doctor) is as well not reliable as he said something blunt can be a figure, carrot and penis in the lack (sic) of cogent evidence which linking the appellant with the charging offence.

7. That, your Lordship the learned trial SRM erred in law and fact by convicting the appellant relied on exhibit P7 (sulphate bag containing

bhangi) while the prosecution side via PW10, PW11, PW14 and PW15 failed to prove the chain of custody on exhibit P7 as to its searching, seizing, receiving, handling and storing as it failed to tender before the trial court a certificate of handling over exhibit contrary to the procedure of law.

8. That, your Lordship the learned trial SRM erred in law and fact by convicting the appellant relied on exhibit P9 (caution statement) which was un-procedurally recorded by PW16, G8451 detective corporal Gabriel after the lapse of the prescribed period by law of four hours while the appellant stated to be tortured at police station by MSHAM and JOHN to show or give evidence at page 43 last three lines in the defense contrary to the procedure of law.
9. That, your Lordship the learned trial SRM erred in law and fact by convicting the appellant while the prosecution delayed to arraign him without any justifiable reasons assigned for the delay as the appellant was arrested on 6/10/2022 and brought to court on 6/12/2022 beaten by MSHAM and JOHN to show or give evidence.

10. That, your Lordship the learned trial SRM erred in law and fact by convicting the appellant while the prosecution case was not proved beyond reasonable doubt.

This court on 24/07/2023 ordered that the appeal be argued by written submissions and the parties duly filed the same.

In the first ground of appeal, the appellant faults the trial court for convicting him based on a defective charge sheet as it did not cite a specific punishment provision. He also faulted the trial court for not providing details of the section under which the appellant was charged. He argued that he should have been charged under section 130(1)(2)(e) of the Penal Code, Cap 16 R.E. 2019. He submitted that the charge sheet is wanting for simply referring to section 130(2)(e).

In ground two of the appeal, the appellant faults the trial court for convicting him upon reliance of the discredited and un-procedural testimonies of PW1 (a girl of tender age of 11 years old), and PW4 (the victim) a girl of tender age of 5 years without asking them preliminary questions with a view to determine whether they understand the nature of oath or affirmation,

contrary to the requirements of section 127(2) of the Evidence Act, Cap. 6 R.E. 2019.

The respondent submitted that the said section 127(2) of the Evidence Act, requires the child to promise to tell the truth and not lie. The case of **Samwel Abraham @ Chuma vs Republic (Criminal Appeal No. 531 of 2020) [2023] TZCA 61** (24 February 2023) was cited in support of the submission.

As regards the third ground of appeal, the appellant is challenging his conviction based on evidence of PW1 and PW4 as full of discrepancies and contradictions. In particular, regarding the time of the commission of the offence. PW1 says it was in the evening, whilst PW4 says it is in the afternoon. The respondent made it clear that the inconsistency and contradiction are not fatal as it does not go to the root of the case. The case of **Dickson Elia Nsamba Shapwata and Another vs Republic (Criminal Appeal 92 of 2007) [2008] TZCA 17** (30 May 2008) was referred to the court for ease of reference.

In-ground four of the appeal, the appellant is challenging his conviction based on visual identification of PW1 and PW4 which was, allegedly, un-

procedural and discredited. Further, it was submitted that the intensity of the light was insufficient for proper identification of the appellant and that no graphic description of the appellant was given. The respondent was of the opposite view that the identification of the appellant was proper as he was caught at the crime scene holding the victim. The appellant was also caught with a package/satchel of cannabis sativa and was arrested, taken to the local government leaders, and later to the police station. Since the appellant was arrested at the crime scene the issue of improper identification cannot stand. The case of **Felix Majuga vs Republic (Civil Appeal 509 of 2020) [2022] TZCA 695 (9 November 2022)** was cited in support of the submission.

Submitting in support of the 5th ground of appeal, the appellant challenges the decision of the trial court on the ground that it was wrong to convict him based on exhibit P1, an identification parade register, which was improperly tendered by the prosecuting state attorney. It was the respondent's submission that exhibit P1 was tendered by the prosecuting state attorney during the preliminary hearing because it was not objected to by the appellant and that is allowed by the law under section 192 (4) of the CPA.

Further, the exhibit was explained by PW12 and it was read over to the accused as indicated on page 31 of the trial court proceedings.

The appellant, in-ground six of the appeal, is challenging his conviction as wrong because it was based on the evidence of PW9 (a medical doctor), which was unreliable. After all, he said that something blunt which penetrated the victim could be a figure, carrot, or penis. This, according to the appellant, did not connect him with the offence he was charged with. The respondent, in reply, submitted that those were explanations of PW9 on what could be a blunt object as he was not at the crime scene.

As regards ground seven of the appeal, the appellant submits that the trial court erred in convicting the appellant relying on exhibit P7 (a sulphate bag containing cannabis sativa) whilst the respondent's witnesses failed to prove chain of custody as to its searching seizing, receiving, handling and storing as a certificate of storing was not tendered in court. The respondent was of the view that, indeed, a chain of custody document was not tendered in court but the oral account of prosecution witnesses explained the chronological order as to arrest, search, seizure, and handling of exhibit was well established given that the nature of exhibit was that which cannot easily change hands.

The appellant, in support of ground eight of the appeal, submits that the trial court erred in law and in fact by convicting the appellant based on Exhibit P9, a caution statement which was recorded contrary to procedure after the lapse of the prescribed period of law of four hours. Further, the appellant claimed to have been tortured by one Msham and John. The court was referred to page 43 of the proceedings of the trial court. The respondent replied that the caution statement was tendered by PW16 as indicated in pages 39 and 40 of the trial court proceedings. The appellant neither objected nor cross-examined the witness, and thus is barred from challenging the same. The case of **Nyerere Nyague vs Republic (Criminal Appeal Case 67 of 2010) [2012] TZCA 103 (21 May 2012)** was referred to in support of the submission.

In respect of ground nine of the appeal, the appellant is challenging his conviction by the trial court because the prosecution delayed his arraignment in court without justifiable reasons, he was arrested on 6th October 2022 but arraigned in court on 6th December, 2022. The respondent agrees on the issue of delay but is of the view that the same did not prejudice the appellant and that not every contravention of the CPA leads to the exclusion of

evidence on record. Further, it was argued that since the omission did not prejudice the appellant the same is curable under section 388(1) of the CPA.

In-ground ten of the appeal, the appellant argues that the trial court erred in convicting him whilst the case was not proved against him beyond reasonable doubt. Citing sections 110(1) and (2) of the Evidence Act, Cap. 6 R.E.2019. The appellant also referred this court to the cases of **Jonas Nkize v. Republic [1992] TLR 213, Said Hemed v R [1987] TLR 117,** and **Nathaniel Alphonce Mapunda and Another v. Republic [2006] TLR 395**.

The respondent submitted that the offence of rape was proved beyond a reasonable doubt, age of the victim and penetration were properly proved by the respondent referring to the testimony of PW4 (a victim) and PW9 (a medical doctor).

As regards the offence of trafficking in narcotic drugs, the respondent argued that the chain of custody was clearly established by PW4, PW5, PW6, PW7, PW3, PW10, PW11, PW13, and PW15. The relevant substance was proved to be cannabis sativa weighing 427.60 grams.

Parties having concluded their submissions, it is this court's turn to determine the relevant grounds of appeal taking into account the submissions made by both parties herein.

Starting with the first ground of appeal, the appellant faults the trial court by convicting him based on a defective charge sheet as it did not cite specific punishment provision. He also faulted the trial court for not providing details of the section under which the appellant was charged. He argued that he should have been charged under section 130(1)(2)(e) of the Penal Code, Cap 16 R.E. 2019. He submitted that the charge sheet is wanting for simply referring to section 130(2)(e).

On this ground we agree with the respondent that non citation of the specific provision providing for the punishment is not fatal, citing section 388 of the Criminal Procedure Act, Cap. 20. R.E. 2022 (hereinafter referred to as 'the CPA'). The said section provides that 388:

> *'Subject to the provisions of section 387, no finding sentence or order made or passed by a court of competent jurisdiction shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the complaint, summons, warrant, charge, proclamation,*

order, judgment or in any inquiry or other proceedings under this Act; save that where on appeal or revision, the court is satisfied that such error, omission or irregularity has in fact occasioned a failure of justice, the court may order a retrial or make such other order as it may consider just and equitable'

Further, the case of **Mohamed Juma Naniye vs Republic (Criminal Appeal 514 of 2020) [2023] TZCA 153 (29 March 2023)** is relevant as the alleged omission did not materially prejudice the appellant herein. In addition, the information in the charge sheet made the appellant appreciate the charge leveled against him. It is this court's view that that the details provided in the charge on both counts provided enough information that enabled the appellant to appreciate the seriousness of the offence he was charged with. The appellant was not prejudiced in any manner whatsoever. Therefore, this ground of appeal fails for want of merit.

Considering ground two and three of the appeal, both are challenging the evidence of PW1 and PW4. The appellant faults the trial court' s decision for convicting him upon reliance of the discredited and un-procedural testimonies PW1 (a girl of tender age of 11 years old) and PW4 (the victim) a girl of tender age of 5 years without asking them preliminary questions

with a view to determine whether they understand the nature of oath or affirmation contrary to the requirements of section 127(2) of the Evidence Act, Cap. 6 R.E. 2019. It was also argued that the testimony of PW1 and PW4 as full of discrepancies and contradictions thus unreliable. This was strongly resisted by the respondent who submitted that section 127(2) requires the child to promise to tell the truth and not lies. It is this court's view that the law is very clear, section 127(2) of the **Evidence Act, Cap. 6 R.E. 2019** provides that:

> *'A child of tender age may give evidence without taking an oath or making an affirmation but shall, before giving evidence, promise to tell the truth to the court and not to tell any lies.'*

The above reproduced section, which was also cited by the appellant in support of his submission does not require the child to understand the nature of oath or affirmation, it requires the child to promise telling the truth and not lies. Both PW1 and PW4 promised to tell the truth and that suffices. The position provided by the law has been cemented in several cases including the case of **Samwel Abraham @ Chuma vs Republic (Criminal Appeal No. 531 of 2020) [2023] TZCA 61** (24 February 2023).

The issue of discrepancies and inconsistences of evidence of PW1 and PW4 and, in particular, regarding time of commission of the offence. PW1 says it was in the evening, whilst PW4 says it is in the afternoon. In the opinion of this court that discrepancy immaterial. This is due to the fact that the appellant started laying the foundation of committing the offence in broad daylight until he was caught at the scene of the crime when it was getting dark. As for children of tender age like PW4, it is always daytime when there is light. The difference between afternoon and evening, when there is light, is not a concern for children of her age. Therefore, the court agrees with the respondent that the inconsistency and contradiction in the testimony of PW1 and PW4 are minor and thus not fatal as it does not go to the root of the case. The case of **Dickson Elia Nsamba Shapwata and Another vs Republic (Criminal Appeal 92 of 2007) [2008] TZCA 17** is relevant. Therefore, this court finds that grounds two and three have no merit.

In ground four, the appellant is challenging his conviction based on visual identification of PW1 and PW4 which was, according to him, improper and discredited. He further submitted that the intensity of the light was insufficient for proper identification and that no graphic description of the appellant was given. This ground will not hold this court for long. This is

because the evidence on record shows that the appellant was seen by PW1 and PW4 and other witnesses in broad daylight. Further, the appellant was caught at the crime scene holding the victim with their legs stretched towards each other. Also the appellant was caught having the alleged satchel/bag of cannabis sativa and was arrested, then taken to the local government leaders and later to the police. Since the appellant was arrested red-handed at the crime scene the issue of improper identification is an afterthought. In the case of **Abel Mathias @ Gunza @ Bahati Mayani vs Republic (Criminal Appeal No. 267 of 2020) [2023] TZCA 25** (20 February 2023), the Court of Appeal held that:

> *'The failure to name or describe a suspect may be validly raised where there is an unexplained delay in arresting that particular suspect. In this case there is no such delay, therefore the complaint is misplaced and we dismiss it.'*

Moreover, in the case of **Felix Majuga vs Republic (Civil Appeal 509 of 2020) [2022] TZCA 695** (9 November 2022), the Court of Appeal, held that:

Therefore, in the circumstances of this case where the appellant was arrested while committing the crime, the issue of identification does not arise as the court held in a number of decisions. In **Daffa Mbwana Kedi (supra**) the Court held that:

> *"The Court has in a number of times held that where an accused is arrested at the scene of crime his assertion that he was not sufficiently identified should be rejected. [See Bahati Robert vs. Republic (supra) and Joseph Safari Massay vs. Republic, Criminal Appeal No. 125 of 2012 (unreported).]"*

The circumstances in this case, reflect the holding of the court of appeal in the above cited cases. The appellant was arrested at the scene of the crime red-handed with the victim, there was no delay in arresting him whatsoever. This court, therefore, finds that the appellant was properly identified based on the series of events, testimonies of witnesses, time he spent with PW1 and PW4 and was caught red-handed with the victim in the bushes.

Regarding 5th ground of appeal, the appellant challenges the decision of the trial court on the ground that it was wrong in convicting him based on the exhibit P1, a parade register, which was irregularly tendered by the

prosecuting state attorney. The court notes that the said exhibit was tendered during preliminary hearing by the prosecuting state attorney. As submitted by the respondent, it was not objected to by the appellant, and that is allowed by the law under section 192(4) of the CPA. The said section provides that:

> *'Any fact or document admitted or agreed (whether such fact or document is mentioned in the summary of evidence or not) in a memorandum filed under this section shall be deemed to have been duly proved; save that if, during the course of the trial, the court is of the opinion that the interests of justice so demand, the court may direct that any fact or document admitted or agreed in a memorandum filed under this section be formally proved'.*

Given the requirements of the above section, exhibit P1, which was explained by PW12 and it was read over to the accused in the trial as indicated in page 31 of the trial court proceedings, the same was properly tendered and admitted. Therefore, this grounds fail as well.

Ground six of the appeal is challenging conviction of the appellant for being wrong because it was based on the evidence of PW9 (medical doctor) which,

according to the appellant, was unreliable because he said that something blunt could be a figure, carrot or penis. This, according to the appellant, did not connect him with the offence he was charged with. The respondent submitted that those were explanation of PW9 on what could be a blunt object as he was not at the crime scene. This court inclines to agree with the respondent and finds that the witness was exemplifying the meaning of a blunt object which does not make his testimony unreliable. This ground of appeal also fails.

As regards ground seven of the appeal, the appellant submits that the trial court erred in convicting the appellant relying on exhibit P7 (a sulphate bag containing cannabis sativa) whilst the respondent's witnesses failed to prove chain of custody as to its searching seizing, receiving, handling and storing as the certificate of storing was not tendered in court.

The respondent was of the view that it is true chain of custody document (certificate)was not tendered in court, but the oral account of PW3, PW4, PW5, PW6, PW7, PW10, PW11 and PW13 explained the chronological order as to arrest, search, seizure and handling of exhibit was well established. A further argument was made that the nature of exhibit was that which cannot

easily change hands, and thus oral testimony showing chain of custody was sufficient to establish the same.

This court, may to some extent consider the oral account as to the chain of custody in respect of exhibits which do not change hand easily. However, the exhibit in question in this case weighs 427.60 grams which can easily change hands from one person to another in a blink of an eye. Therefore, the court does not agree with the respondent in this aspect.

In this case, there is also a peculiar feature that the arrest was done by civilians who are unfamiliar with the chain of custody procedures. From the trial court proceedings, it is indicated that there is a huge possibility that the said exhibit P7 was tempered before reaching the police station. The testimony of PW7 on page 20 of the proceedings speaks for itself when he says:

> *'I told him he is under arrest…I took this sulphate bag…..inside the bag there was bhangi'.*

The testimony of PW7 speaks volumes. It is unclear how he discovered that the substance in the bag was bhangi, was it by a mere look, or smell, did he, somehow, test the same? It was not stated.

It is this court's view that the chain of custody of exhibit P7 is questionable and creates serious doubts, especially when it had not reached the police station, given that it was under the care of persons unacquainted with the relevant legal procedures.

Hence, it is this court's position that it was not safe for the trial court to convict the appellant for the offence of trafficking narcotic drugs based on exhibit P7. Therefore, this ground of appeal is meritorious, conviction on the offence of trafficking narcotic drugs contrary to section 15A (1) and 2 (c) of the Drugs Control and Enforcement Act, Cap 95 R.E.2019 as amended is hereby quashed, the sentence of 20 years imprisonment is set aside.

Turning to ground eight of the appeal, the appellant, in support of the same, submits that the trial court erred in law and fact by convicting the appellant based on exhibit P9, a caution statement that was improperly recorded after the lapse of the prescribed period of law of four hours. Further, the appellant claimed to have been tortured by one Msham and John. The court was referred to page 43 of the proceedings of the trial court. The respondent replied that the caution statement was tendered by PW16 as indicated in pages 39 and 40 of the trial court proceedings. The appellant neither objected nor cross-examined the witness on the same, and thus is barred

from challenging the same at this hour. The case of **Nyerere Nyague vs Republic (Criminal Appeal Case 67 of 2010) [2012] TZCA 103** (21 May 2012) was referred to in support of the submission.

It is this court's observation that this ground of appeal is an afterthought in the sense that the appellant did not object to tendering of exhibit P9 and did not challenge the same even by way of questions. It is late to challenge the same at this hour, given that there was no evidence of torture or beatings as alleged by the appellant. In the absence of the same, this court is bound to dismiss the ground of appeal. The case of **Nyerere Nyague vs Republic (Criminal Appeal Case 67 of 2010) [2012] TZCA 103** (21 May 2012) followed.

In respect of ground nine of the appeal, the appellant is challenging his conviction by the trial court because the prosecution delayed his arraignment in court without justifiable reasons. He was arrested on 6th October 2022 but arraigned in court on 6th December 2022. This court is of the view that the delay of arraignment in court is independent of evidence leading to proof beyond reasonable doubt. The appellant did not state how the delay in arraigning him in court led to his conviction so that it could become a relevant factor in determining this appeal. As argued by the respondent, the omission

did not prejudice the appellant's case the same is curable under section 388(1) of the CPA. This ground of appeal is also unmeritorious.

In-ground ten of the appeal, the appellant argues that the trial court erred in convicting him whilst the case was not proved against him beyond reasonable doubt. Citing sections 110(1) and (2) of the Evidence Act, Cap. 6 R.E.2019. The appellant also referred this court to the cases of **Jonas Nkize v. Republic [1992] TLR 213, Said Hemed v. R [1987] TLR 117, and Nathaniel Alphonce Mapunda and another v. Republic [2006] TLR 395**.

The respondent submitted the offence of rape was proved beyond reasonable doubt, age of the victim and penetration were properly proved by the respondent referring to the testimony of PW4 and PW9. This court will revisit the ingredients of the offence of rape with a view to resolving the appellant's complaint.

Section 130(1) and (2)(e) of the **Penal Code, Cap. 16 R.E. 2019** by which the appellant was charged with rape provides that:

"130.-(1) It is an offence for a male person to rape a girl or a woman.

(2) A male person commits the offence of rape if he **has sexual intercourse with a girl or a woman** under circumstances falling under any of the following descriptions:

(a-d) Not applicable

(e)with or without her consent when she is under eighteen years of age, unless the woman is his wife who is fifteen or more years of age and is not separated from the man."

Moreover, section 130(4) **Penal Code, Cap. 16 R.E. 2019**

"(4) For the purposes of proving the offence of rape-

***(a) penetration however slight is sufficient to constitute the sexual intercourse necessary to the offence;* "**

Going by the provisions of the law cited above, in the present case, it was proved that the appellant had sexual intercourse with a girl of five years (PW4) and penetration was proved by the testimony of PW4 and PW9 who also tendered exhibit P4, a PF3 of the victim. See the case of **Athumani Rashidi vs Republic (Criminal Appeal 110 of 2012) [2012] TZCA 143**

(25 June 2012). The cases cited by the appellant in support of his submission are thus distinguishable.

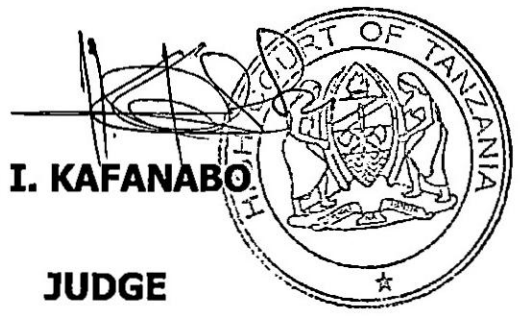
Therefore, this court finds that the appeal partly succeeds, in respect of 1st count of trafficking narcotic drugs. However, the appeal in respect of the offence of rape is dismissed for want of merits.

Therefore, this court settles for the following orders:

1. The appeal is partly allowed. Conviction on the offence of trafficking narcotic drugs contrary to section 15A(1) and 2 (c) of the Drugs Control and Enforcement Act, Cap 95 R.E.2019, as amended is hereby quashed, and the sentence of 20 years imprisonment is set aside.

2. The appeal against conviction and sentence on the offence of rape contrary to section 130(1) and (2)(e) of the Penal Code [Cap. 16 R.E. 2022] is hereby dismissed.
3. The appellant shall continue to serve the sentence of life imprisonment as ordered by the trial court. Other penalties on compensation and strokes of cane remain undisturbed.

Dated, signed and sealed at Dar es Salaam this 14th day of November, 2023.

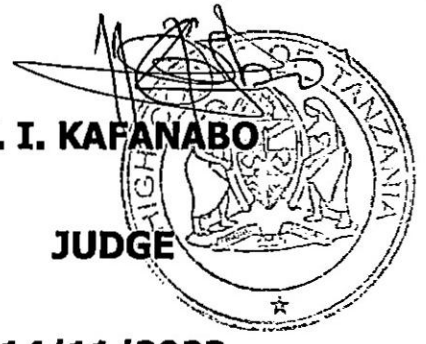


K. I. KAFANABO

JUDGE

14/11/2023

Judgment delivered in the presence of the appellant in person, and in the presence of Ms. Amina Macha, State Attorney, for the respondent.



K. I. KAFANABO

JUDGE

14/11/2023