

TANZANIA / JUDGMENT

Judgement Criminal Appeal No

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IN THE UNITED REPUBLIC OF TANZANIA JUDICIARY IN THE HIGH COURT OF TANZANIA
MOSHI SUB-REGISTRY AT MOSHI CRIMINAL APPEAL NO. 14280 OF 2024 (C/F Criminal Case
No.39006 of 2022 in the District Court of Siha at Siha) ELIA KANAELI NKINI
..... APPELLANT VERSUS
REPUBLIC..... RESPONDENT

JUDGEMENT

Date of Last Order: 15.07.2024 Date of Judgment: 29.07.2024 MONGELLA, J. This is an appeal from the district court of Siha at Siha (henceforth, the trial court) whereby the appellant was arraigned for the offence of rape contrary to Section 130 (1), (e) and 131 (1) (a) of the Penal Code [Cap 16 R.E 2022]. The Particulars of the offence are to the effect that: on 02.12.2023 at Karansi village within Siha district in Kilimanjaro region, the appellant unlawfully had sexual intercourse with a girl aged 12 years. (hereinafter referred to as the victim). The appellant denied the charge levelled against him leading the case to proceed to trial. To prove the case, the prosecution paraded four witnesses. Its evidence was to the effect that: on Page 1 of 21 02.12.2023 at around 16:00hrs, the victim was sent by her father to buy cigarettes and a match box. She went to the appellant's shop but he told her that he does not sell cigarettes so she should go to another shop to get cigarettes and then go back to him to get the matchbox. The victim went to another shop and got cigarettes and then went back to the appellant's shop. After observing his surroundings and seeing that there was no one nearby, the appellant took the victim into his shop, undressed her and himself, laid her on the bed and raped her. The victim narrated the incident to one Baba Shedi, his uncle, and PW1. PW1 informed the victim's father on what had transpired. They all went to the appellant's shop. PW2, a co-wife of the victim's mother also appeared at the shop after being informed of the incident by one mama Gilo who called her. At the shop the victim also told her what had happened to her. The appellant was arrested by a militiaman. The victim was sent to Siha district hospital in company of a police officer and her mother. She was examined by PW4, a clinical officer, on the same day whereby bruises were found in her vagina. She was as well found to have no hymen. The victim also took a vaginal swab which showed presence of sperms. PW4 duly filled the PF3 which was tendered and admitted as Exhibit P1. When invited to enter defence, the appellant stood alone for his case. He alleged to know nothing about the incident. Further, he challenged that the people that brought the victim to his place did not come to testify in court. He alleged that the incident was Page 2 of 21 brought out of grudges by

neighbours who wanted to take his place. He also faulted the absence of any of his relatives at the hospital to verify that the victim was raped. Further, he denied knowing the victim prior to the incident. He alleged to have met and known the victim for the first time on the material day when she asked for a matchbox and cigarette at his shop. The trial court found the charge against the appellant proved beyond reasonable doubt. It declared the appellant guilty and convicted the appellant for the charged offence. Consequently, the appellant was sentenced to serve thirty years (30) in prison. Aggrieved by the decision of the trial court, the appellant has preferred this appeal on the following grounds:

1. That, the learned trial Magistrate grossly erred both in law and fact in failing to note that there were variance between the charge and the evidence on record. (sic).
2. That, the learned trial Magistrate grossly erred both in law and fact in finding and holding that the age of the victim of the alleged offence was proved beyond reasonable doubt.
3. That, the trial court failed to note that the prosecution witnesses gave a very highly discrepant evidence to the extent of being confusing as to who they were testifying for as a victim, whether was a girl or a boy. (sic) Page 3 of 21
4. That, the trial court convicted and sentenced the Applicant on a bad prepared judgment.
5. That, the trial court convicted the appellant on an irregular proceedings. (sic)
6. That, the learned trial Magistrate grossly erred both in law and fact in relying upon medical doctor's evidence despite the same being bias and not based on expert's opinion. (sic).
7. That, the learned trail Magistrate grossly erred both in law and fact in using weak, contradictory, inconsistent and wholly unreliable prosecution's evidence as a basis of the appellant's conviction.
8. That, the learned trial Magistrate grossly erred both in law and fact in convicting and sentencing the appellant despite the charge being not proved beyond reasonable doubt against the appellant and to the required standard by the law. The appeal was resolved by written submissions whereby the appellant was represented by Mr. Engelberth Boniface, learned advocate while the respondent was represented by Mr. Makore Maheri, learned State attorney. Prior to advancing his submissions, Mr. Boniface craved to abandon the 3rd and 4th grounds of appeal. He also consolidated the 1st and 2nd grounds of appeal and then the 5th, 6th, 7th and 8th grounds of appeal. Page 4 of 21 Addressing the 1st and 2nd grounds, he averred that the charge that was read over to the appellant disclosed that the victim was 12 years old as also stated by the Honourable trial Magistrate on the 1st page of her judgement. However, he challenged, the testimony of PW3, the victim herself, and that of PW1, the victim's uncle, disclosed that the victim was 11 years. He contended that the particulars of the charge ought to have been proved beyond reasonable doubt. In that respect, he held the view that the prosecution had the liberty to withdraw the charge when they discovered that it was defective as per Section 234 of the Criminal Procedure Act [Cap 20 R.E 2022]. He argued further that this goes hand on hand with the requirements of a

charge provided under Section 132 of the Criminal Procedure Act. In that regard, he contended that the prosecution ought to have proved that PW3 was 12 years old and not otherwise. To fortify his argument, he referred the case of Salum Rashid Chitende vs. Republic (Criminal Appeal No 204 of 2015)

- [2015] TZCA 572 (12 October 2015) and that of Mathias Samuel vs. Republic, Criminal Appeal No. 271 of 2009 (unreported). The counsel had further view that the discrepancy between the charge and evidence create doubts on the prosecution case Rendering the charge not proved to the required standard. He cemented his contention with the decision in the case of John Nkinze vs. Republic [1992] TLR 213. Page 5 of 21 Expounding on the 5th, 6th, 7th and 8th grounds, Mr. Boniface challenged the conviction against the appellant on the ground that the prosecution failed to prove the case beyond reasonable doubt. He fronted three doubts to that effect. One, that PW3's testimony was not taken on oath. He pointed out that the Honourable trial Magistrate recorded that the victim did not know what an oath is. In those circumstances, he found it questionable as to how the trial Magistrate established that PW3 did not know the meaning of oath without asking her questions. He challenged the trial Magistrate for not probing the victim to ascertain whether she knew the difference between truth and lies, right and wrong and the consequences of telling lies. He further cited the case of Dadi Salum Likalala @ Chipapi vs. Republic (Criminal Appeal No. 54 of 2021) [2021] TZHC 7695 (15 December 2021) whereby this Court cited with approval the case of Salum Rashid Chitende vs. Republic (supra) and that of Issa Salum Nambaluka vs. Republic (Criminal Appeal No. 272 of 2018)
- [2020] TZCA 10 (21 February 2020) which explain the procedure in recording evidence of a child of tender age. He thus faulted the trial Magistrate for failure to comply with instructions laid out by the Court of Appeal in the respective cases. Considering the alleged anomaly, he found PW3's testimony legally defective, deserving to be expunged from the record. In his stance, when the testimony is expunged, the evidence of the rest of the witnesses would remain uncorroborated and insufficient to hold the conviction against the appellant. Page 6 of 21 Two, he claimed that Exhibit PE1 was never read out or explained to the appellant in the language he understood after being admitted by the trial court. Considering the alleged omissions, he was of the view that the same curtailed the appellant's right to be heard. He argued so on the ground that the appellant did not know the contents of the document to aid him to prepare his cross examination. He cemented his argument with the case of Lack s/o Kilingani vs. Republic (Criminal Appeal No. 402 of 2015) [2016] TZCA 688 (29 July 2016); Said Matula vs. Republic [1995] TLR 3. Arguing further, he pointed out the three stages of admission of exhibits as laid out in Robinson Mwanjisi and Three Others vs. Republic [2003] TLR 218 insisting that Exhibit P1 was not cleared for admission as evidence as was not read out loud before the trial court. He called for the exhibit to be expunged from the record. Three, he alleged that there was no record that the appellant was given opportunity to cross examine PW4. In that regard, contended that the appellant was denied his right to be heard as enshrined under Article 13(6)(a) of the Constitution of the United Republic of Tanzania, 1977. He further fortified his

averment with the case of VIP Engineering and Marketing Ltd and 2 Others vs. CitiBank Tanzania Ltd (Consolidated Civil Reference 6 of 2006) [2007] TZCA 165 (26 September 2007), which was cited with approval in Abbas Sherali and Another vs. Abdul Sultan Haji Mohamed Fazalboy (Civil Application No. 133 of 2002) [2005] TZCA 105 (17 November 2005). He further referred decisions in General Medical Council vs. Spackman [1943] A.C 627, Hypolito Cassiano De Souza vs. Page 7 of 21 Chairman and Members of the Tanga Town Council [1961] E.A 377 and that of D.P.P vs I. Tesha and Another [1993] TLR 327. Mr. Boniface concluded his submission by insisting that the case was not proved beyond reasonable doubt. In the premises, he argued that this Court ought to set aside the trial court's judgement and proceedings and release the appellant from custody. The respondent opposed the appeal. In reply to the 1st and 2nd grounds, Mr. Maheri first admitted that there was indeed a variance between the charge and the evidence in relation to the victim's age. He said that while charge indicated she was 12 years old, the testimony of PW2 and PW3 was to the effect that she was 11 years old. On the other hand, however, making reference to Section 61 and 62 of the Evidence Act, Mr. Maheri contended that facts are proved by oral evidence, hence the age of the victim was duly proved vide testimony of PW3, the victim and PW2, her uncle. He further contended that the trial court addressed the issue pertaining the age of the victim in its Judgement whereby it ruled that there was no doubt raised pertaining the age of the victim as it was definite that she was a child of tender age. The learned State attorney argued that it is trite law that proof of age in sexual offences is either by production of the victim's birth certificate or may come from the victim herself, relative, parent, medical practitioner, teacher or close friend. He fortified his averment with the case of Jafari s/o Musa vs. DPP (Criminal Appeal No. 234 of 2019) [2022] TZCA 29 (17 February 2022). Page 8 of 21 He further contended that the trial court which was in good position to see the demeanour and character of witnesses, believed their evidence as being true. In his stance, the variance on the age of the victim between the charge and the witnesses' testimony did not go to the root of the case and that there was no doubt that the victim was under 14 years. He added that the prosecution also proved penetration and that the appellant was the perpetrator. As to the 5th, 6th, 7th and 8th grounds, Mr. Maheri responded to the three raised reasons separately. On the first, he averred that the trial court asked the victim simple questions to know whether she was trustworthy prior to taking her testimony. That, while the questions were not reflected in the proceedings, the same is proved by her response. In the premises, he was convinced that the trial court complied with the requirement laid down under Section 127 (2) of the Evidence Act because PW3 promised to tell the truth and not lies prior to giving her evidence. He supported his averment with the case of Godfrey Wilson vs. Republic (supra) and Ally Ngozi vs. Republic (Criminal Appeal No. 216 of 2018) [2020] TZCA 1786 (24 September 2020). Despite notifying the court that he shall argue collectively the second set of consolidated grounds of appeal, Mr. Maheri still submitted on the same in seriatim. Arguing on the 5th ground, he challenged Mr. Boniface for not pointing out the alleged irregularity in the proceedings. With regard to the 7th ground, he disputed there being any contradiction between the charge and the

witnesses' testimonies. In the alternative, however, he contended that if there Page 9 of 21 existed any contradiction, the same were minor and curable under Section 388 of the Criminal Procedure Act. Submitting on the 6th ground, Mr. Maheri conceded on the assertion that Exhibit P1 was not read over and explained to the respondent upon admission. He as well admitted that the remedy was for the exhibit to be expunged from the record to protect the appellant's right to be heard as provided under Article 13 (6) of the Constitution. On the other hand, however, he believed that if the exhibit is expunged, the oral evidence recorded from PW4 would not be affected. To bolster his contention, he referred the case of Wambura Kigingwa vs. Republic (Criminal Appeal 301 of 2018) [2022] TZCA 283 (13 May 2022) and Huang Qin & Another vs. Republic (Criminal Appeal 173 of 2018) [2021] TZCA 210 (25 May 2021). Addressing the 8th ground, Mr. Maheri held the firm view that the case against the prosecution was proved beyond reasonable doubt. Considering the testimony of PW3, he had the contention that PW3 proved penetration by explaining how the appellant inserted his manhood into her female organ. To cement his stance, Mr. Maheri further argued that the medical doctor who examined the victim also revealed that she found bruises, no hymen and presence of sperms thereby concluded that the victim had been penetrated by a male organ. With regard to proof of age, he argued that the prosecution also proved that child was of tender age and that the appellant was the perpetrator of the sexual act. In that regard, according to him, Page 10 of 21 all elements of the offence of statutory rape were well proved. The learned State attorney concluded his submission by praying for the appeal to be dismissed for lack of merit. After considering the grounds of appeal and the rival submissions of the parties' counsels and the trial court record, I prefer to address the grounds of appeal in the same manner as organised by the appellant's counsel. With regard to the 1st and 2nd grounds, which were consolidated, Mr. Boniface contended that there was variance between the charge and the evidence pertaining the age of the victim. This assertion was in fact not disputed by the respondent's counsel. Upon observing the charge, I agree with both counsels that the same refers the age of PW3 as being 12 years, while on the other hand, the evidence on record by PW3, the victim and that of PW2, the victim's uncle, reveal that she is 11 years old. At this point, the question is whether the discrepancy is enough to render the charge unproved. It is well settled that where there is a variance between the charge and the evidence, the charge ought to be amended to accommodate such details. This position is well laid out under Section 234(1) of the Criminal Procedure Act, which states: "234.-(1) Where, at any stage of a trial, it appears to the Court that the charge is defective, either in substance or form, the Court may make such order for alteration of the charge either by way of Page 11 of 21 amendment of the charge or by substitution or addition of a new charge as the Court thinks necessary to meet the circumstances of the case unless, having regard to the merits of the case, the required amendments cannot be made without injustice; and all amendments made under the provisions of this subsection shall be made upon such terms as the Court shall seem just." This requirement was well elaborated in *Erasto John Mahewa vs. Republic* (Criminal Appeal No. 287 of 2020) [2023] TZCA 17678 TANZLII, in which the Court held: "It is trite law that, the allegations contained in the

charge must be supported by the prosecution account so as to prove the charge beyond reasonable doubt. The variance between the charge and the evidence adduced can be remedied before the end of the trial by invoking the provisions of section 234 (1) of the Criminal Procedure Act [CAP 20 R.E 2022] to amend the charge for cases triable by the subordinate courts like the present one. Where the variance remains unchecked, the adverse effect is that the prosecution case will be rendered not proved.” It is evident in the proceedings that the prosecution never sought to amend the charge even after PW2 and PW3’s testimonies disclosing that PW3 was 11years old. However, despite the circumstances, I am still of the considered view that the error occasioned in the charge is minor and well curable under Section 388 of the Criminal Procedure Act. I am of such view on the ground that the appellant Page 12 of 21 was duly charged with statutory rape which involves a victim below 18 years of age and of which consent is immaterial. A situation like this one was handled in the case of George Claud Kasanda vs. DPP (Criminal Appeal 376 of 2017) [2020] TZCA 76 TANZLII, in which the Court of Appeal explained: “As highlighted above, the appellant was being accused of carnally knowing a girl aged 16 years. On account of that, the learned State Attorney was of the view that the offence section ought to have cited section 130(l)(2)(e). In essence that provision creates an offence now famously referred to as statutory rape. It is termed so for a simple reason that; it is an offence to have carnal knowledge of a girl who is below 18 years whether or not there is consent. In that sense age is of great essence in proving such an offence. The prosecution is duty bound to establish among other ingredients, that the victim is under the age of eighteen so as to secure a conviction.” Being an offence of statutory rape, as explained above, the prosecution is duty bound to prove the age of the victim to the effect that the victim is under 18 years of age. It is well settled that the evidence of age of the victim may be proved by the victim, her guardian, parents, relatives or medical practitioner. This was also well stated in Issaya Renatus vs. Republic (Criminal Appeal 542 of

2015) [2016] TZCA 218 (26 April 2016) TANZLII, that: “We are keenly conscious of the fact that age is of great essence in establishing the offence of statutory rape under section 130 (1) (2) (e), the more so as, under the provision, it is a requirement Page 13 of 21 that the victim must be under the age of eighteen. That being so, it is most desirable that the evidence as to proof of age be given by the victim, relative, parent, medical practitioner or, where available, by the production of a birth certificate.” See also, Shani Chamwela Suleiman vs. Republic (Criminal Appeal 481 of 2021) [2022] TZCA 592; Iddi Omary vs. Republic (Criminal Appeal No. 408 of 2021) [2023] TZCA 17699 and; Mzee Ally Mwinyimkuu @ Babu Seya vs. Republic (Criminal Appeal 499 of

2017) [2020] TZCA 1776 (All from TANZLII). In this case, PW3, the victim, upon being questioned by the court before giving her testimony, mentioned that she was 11 years old. PW2, her uncle, to whom she narrated the incident, also testified on her age being 11 years old. These pieces of testimony from PW2 and PW3 evidently proves that the victim was below 18 years of age by the time the offence was committed against her. In the premises, I find

the consolidated grounds of appeal without merit and dismiss them accordingly. As to the 5th, 6th, 7th and 8th grounds of appeal, which were also consolidated, the appellant's counsel advanced three issues to be determined by this court. First, that, PW3's evidence was not taken on oath; two, that, Exhibit P1 was not read and explained to the appellant upon being admitted and; three, that, the appellant was not afforded the right to cross examine PW4. On the first issue, as pointed out, Mr. Boniface claimed that PW3's evidence was not taken on oath. He further claimed that the trial Page 14 of 21 court noted that PW3 did not understand the nature of oath, but did not show how it arrived at such conclusion as it never probed her on such details. The concerns raised by Mr. Boniface fall on the requirement set under Section 127 (2) of the Evidence Act, which states: "(2) 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 definition of a child of tender age is well provided under Section 127(4) of the Evidence Act, which states: "(4) For the purposes of subsections (2) and (3), the expression "child of tender age" means a child whose apparent age is not more than fourteen years." Section 127(2) of the Evidence Act clearly provides that a child of tender age may give evidence without oath, but should promise to tell the truth and not lies. The provision has been interpreted to mean that where a child understands nature of oath then she or he would be required to make an oath or affirmation prior to his or her testimony being recorded. On the other hand, in negation, the child would have to promise to tell the truth and not lies. This position was well settled in the case *George Lucas Marwa vs. Republic* (Criminal Appeal No.382 of 2019) [2023] TZCA 17424 TANZLII, whereby the Court held: Page 15 of 21 "It is our conviction that where a witness is a child of tender age, a trial Court should at the beginning ask a few pertinent questions, so as to determine whether or not the child witness understands the nature of oath. If he replies in the affirmative, then he or she can proceed to give evidence on oath or affirmation, depending on the religion professed by such child witness. If such child does not understand the nature of oath, he should, before giving evidence, be required to promise to tell the truth and not to tell lies. The procedure explained should be reflected on the proceedings of the trial court. In *Godfrey Wilson vs. Republic* (supra) the Court pointed out that in order to arrive to such stance the trial Magistrate ought to ask the child several questions. The Court proceeded to suggest some of such questions by stating: "We think, the trial magistrate or judge can ask the witness of a tender age such simplified questions, which may not be exhaustive depending on the circumstances of the case, as follows:

1. The age of the child.
2. The religion which the child professes and whether he/she understands the nature of oath.
3. Whether or not the child promises to tell the truth and not to tell lies." It is apparent on record that the trial Magistrate did not record the questions she put to PW3. However, as argued by Mr. Maheri, PW3's monologue albeit her reply on the questions put to her is well reflected on the proceedings. It is also evident that she promised to Page 16 of 21 tell the

truth and not lies and the same is clearly reflected therein. If she was not asked any questions to that effect, she would not have replied as such. In that regard, I am of the considered view that the requirement set under Section 127(2) of the Evidence Act was duly observed. Besides, the amendment vide the Legal Sector Laws (Miscellaneous Amendments) Act, 2023, that introduced Sub- Section (7) to section 127 of the Evidence Act allows admissibility of the evidence of a child of tender age even where the requirements under section 127 (2) of the Act have not been duly complied with. The law now provides that the failure of a child of tender age to meet the requirement of Section 127(2) of the Act would not render the evidence inadmissible. For ease of reference the provision states: “32. The principal Act is amended in section 127, by-

- (a) adding immediately after subsection (6) the following:
- (7) Notwithstanding any other law to the contrary, failure by a child of tender age to meet the provisions of subsection (2) shall not render the evidence of such child inadmissible.” The second concern pertains Exhibit P1 not being read and explained in court after being admitted. Mr. Maheri did not contest this issue. The trial court proceedings reveal that upon the PF3 being tendered and admitted as Exhibit P1, one Mr. David Chisimba, the prosecutor in the case, prayed for the witness to read the exhibit. However, there is nowhere shown that the exhibit was read. It is well settled position that upon admission of a documentary evidence, Page 17 of 21 the same must be read out in court. This position has been emphasized by the courts of record in plethora of authorities. In *Jumanne Mondelo vs. Republic* (Criminal Appeal 10 of 2018) [2020] TZCA 1798 (6 October 2020) the Court of Appeal stated: “It is now settled law that once a document has been cleared for admission and admitted in evidence, it must be read out in court. Failure to do so occasioned a serious error amounting to miscarriage of justice” See also, *Joseph Mganga Mlezi & Another vs. Republic* (Criminal Appeal 536 of 2015) [2019] TZCA 361 (4 November 2019); *Lack s/o Kilingani vs. Republic* (Criminal Appeal No. 402 of 2015) [2016] TZCA 688 (29 July 2016) and; *Robinson Mwanjisi and Three Others vs. Republic* [2003] T.L.R 218. Thus, the omission to read the document is a clear violation of the right to fair trial as it denies the adverse party the right to know and understand the allegations posed against him and enter his defence. This was well stated by Court of Appeal in the case of *William Maganga @ Charles vs. Republic* (Criminal Appeal No. 104 of 2020) [2023] TZCA 17742 (6 October 2023) TANZLII. “Reading all documentary exhibits to a person against whom they are sought to be relied upon, gives that person an ample opportunity to defend the case while acquainted with the full content of the entire prosecution case. This is an important part of the doctrine of fair trial.” Page 18 of 21 See also, *Geophrey Jonathan @ Kitomari vs. Republic* (Criminal Appeal No. 237 of 2017) [2021] TZCA 17 (16 February 2021). The effect of the omission to read out document after its admission is a fatal irregularity whose effect is for the exhibit to be expunged. See *William Maganga @ Charles vs. Republic* (supra) in which the Court of Appeal stated: “According to law and to this Court's decision in *Robinson Mwanjisi and Three Others v. R*, [2003] T.L.R. 218 and many other decisions, the appropriate remedy to impose where a document is not read after its admission in evidence, is to discard or expunge it from the

record, thereby rendering it evidentially worthless.” In consideration of the above authority, I hereby expunge Exhibit P1 from the trial court record. Mr. Maheri had the view that even if Exhibit P1 is expunged, the surviving evidence of PW4 is still admissible. Mr. Boniface, on the other hand, faults the evidence of PW4 for the reason that the appellant was not accorded the opportunity to cross examine the witness. This shall be addressed on the third issue as hereunder. Observing the trial court’s proceedings, it appears that while PW4’s testimony starts at page 14 of the proceedings, PW4’s cross examination and re-examination appears to be under page 13 of the proceedings. It should be noted that these proceedings were generated from the E-Case Management System (eCMS) which appears to have misbehaved and shifted the pages. It is therefore Page 19 of 21 a problem occasioned by the eCMS and not the trial court. The bottom line is that PW4 was cross examined. Now, on whether the case against the appellant was proved beyond reasonable doubt. Upon observing the prosecution evidence, I am of the view that, penetration, which is one of the key ingredients in statutory rape was duly proved. The victim, whose evidence is the best as per the case of *Seleman Makumba vs. Republic* [2006] TLR 379 expressly stated that the appellant inserted his manhood, which she termed as “his thing (“cha kukojoalea”), into her female organ after undressing her and himself. She immediately informed her uncle, PW2, who called her father and eventually a militiaman was called to arrest the appellant at his shop. PW1 witnessed his arrest at the shop. PW4 verified that PW3 was brought to Siha district hospital and upon examining her, she found her female organ with bruises and had no hymen. PW4 further stated that the victim also took a swap which upon examination was found to contain sperm which led her to conclude that she was penetrated by a male organ. PW3 identified her assailant being the appellant whom she appears to have known prior to the incident as “baba Jack.” The appellant himself admitted that PW3 came to his shop on the fateful day and that he knew her parents. This shows that there was no mistaken identity. In the premises, I find that the prosecution discharged its burden in proving the case. The prosecution managed to prove that the offence was committed and that it was the appellant who committed the offence. In the foregoing analysis, I find the 5th, 6th, Page 20 of 21 7th and 8th grounds of appeal without merit. As such, the appeal is hereby dismissed for lack of merit. Dated and delivered at Moshi 29th day of July, 2024. X L. M. MONGELLA JUDGE Signed by: L. M. MONGELLA Page 21 of 21

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