

TANZANIA / JUDGMENT

# hopiliti rubeni assenga mandela vs republic 2023 tzhc 17523 22 may 2023

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (MOSHI SUB REGISTRY) AT  
MOSHI CRIMINAL APPEAL NO. 31 OF 2022 (C/F District Court of Rombo at Rombo Criminal Case  
No. 265 of 2020) HOPILITI RUBENI ASSENGA@ MANDELA..... APPELLANT VERSUS  
REPUBLIC..... REPONDENT

## JUDGEMENT

Last order: 24/04/2023 Judgement:22/05/2023 MASABO, J.- The appellant herein was arraigned before the District Court of Rombo at Rombo for unnatural offence contrary to section 154 (1) (a) and (2) of the Penal Code [Cap 16 RE 2019]. The trial court found him guilty of the offence, convicted and sentenced him to serve a 30 years' imprisonment term. Aggrieved, he has filed this appeal praying that this court quash the conviction and set aside the sentence. From the record, the brief facts of the case are as follows. Prior the incident, the appellant was a cook at St. Johnvian Primary School whereas PW1 who is the victim, PW2 one Samuel Festo Kilawe and PW4, Melkizedeck Arobogast Kiondo were pupils in the said school and PW3, Amedeus Sebastian Salema was a teacher in the said school. On the material day, 12/11/2020, PW1, the victim who was then a 12 years boy, PW2 and one Remid Arestarick were walking together to the washroom whereby the appellant called PW1 to the store and instructed him to send away PW2 and Remid. PW1 did not sent them away. Instead, he asked Page 1 of 19 them to wait for him as he entered the store accompanied by the appellant. After they hand entered, the appellant closed the door and ordered PW1 to take off his shorts and bend while he took off his trouser and rubbed oil on his penis and inserted it into PW1's anus. PW2 and Remid became suspicious, they moved closer to the door whereby they heard the victim crying. When they peeped on the store, they saw PW1's short on the floor. The appellant opened the door. PW1, PW2 and Remid reported the matter to PW4 who is the dormitory leader. PW4 instructed them to report the same to PW3 but they did not find him. Thus, they reported the incident to PW3 on the next day, 13/11/2020. The statements of the three were taken by the school leadership. The appellant was called and interrogated whereby he confessed to have molested PW1 and wrote a statement admitting the same. Consequently, his employment was terminated. The matter was reported to the police. PW1 was sent to Huruma Hospital where he was medically examined by PW5 on 16/11/2020. Meanwhile the appellant fled to Arusha and while there he was arrested and later on arraigned in the trial

court where he denied the accusation. He averred that on the fateful day, PW1 and one Mathayo had assisted him with cleaning the kitchen. He sent the two away when he started to clean the store as pupils were not allowed to enter the store. He then continued with his daily duties and left around 18:00hrs. The next day, 13/11/2020 at around 12:30hrs he was called by PW3 and told to go to the office. On arrival, the nun who was in the company of other teachers asked him if he had sodomised PW1. He denied the allegations but later Page 2 of 19 on, he admitted the same as he feared of losing his job. He was made to record and sign a statement bearing his admission, which he did. On the following day, 14/11/2020, he went to his sister's home in Arusha and while there he was arrested. The trial court found the defence highly improbable compared to prosecution's case hence the conviction and sentence subject to this appeal. The appellant has raised 7 grounds in which he faults the trial court for one, relying on confession not taken in compliance of the law; two, relying on weak uncorroborated evidence; three, relying on evidence taken in contravention of Section 127(1) and (2) of the Evidence Act [Cap 6 RE 2019]; four, convicting the appellant by relying on evidence of PW1; five, failing to consider the doctor's evidence; six, failing to recognize time inconsistency in evidence of witnesses and; seven, conviction him while the case was not proved beyond reasonable doubt. Hearing proceeded in writing. The appellant was represented by Ms. Glory Tairo, Advocate and the respondent was represented by Mr. Diaz Makule, State Attorney. Supporting the appeal, Ms. Tairo submitted on each ground of appeal separately. On the first ground she averred that the appellant's confession was taken contrary to the requirements of section 57(1) of the Criminal Procedure Act Cap 11 RE 2022 since he was called and required to write down his statement while being forced and threatened. She argued that the same was wrongly relied upon by the trial magistrate in his decision as seen in page 3 of the trial court's judgment. On the second ground, Page 3 of 19 she averred that the evidence was weak and uncorroborated as the evidence of PW1 and PW2 contradict each other. While PW1 stated that the appellant called him while he was on his way to the toilet with his colleagues and ordered him to send them off but he asked them to wait for him, PW2 stated that the appellant called PW1 and when he had entered the store, he closed the same which made them suspicious such that they peeped inside and saw the appellant undressed. Another contradiction, she argued, was that PW1 stated that he immediately reported the matter to PW4 who instructed them to report the same to PW3 but PW2 stated that they saw a white fluid on the victim's clothes and went to PW4 to report the matter. On the 3rd ground, Ms. Tairo submitted that the trial court offended section 127(1) and (2) of the Evidence Act as it did not follow the procedure for procuring the undertaking to tell the truth and not lies. He amplified that, PW1, PW2 and PW4 were all children of tender age hence subject to the provision above. The trial court only asked them if they were capable of telling the truth but there were no procedures followed. She cited the case of Moses Raphael Lyego vs Republic Criminal Appeal No. 58 of 2020, High Court at Mbeya where the court addressed the fact that the trial court did not show questions asked to the child witness to obtain her promise. She further argued that, the promise should have been vividly seen in the proceedings. The omission to list the questions, she argued, vitiates the whole proceedings. On the 4th ground, she argued that the trial court should not have relied on the evidence of PW1 since it was unreliable because, he stated he was Page 4 of 19 ordered to bend down and the appellant inserted his penis to his anus and at the same time

stated that he saw while fluid coming out of the appellant's penis which is questionable as to how he saw the whitish fluid while he was still in the bent position. On the 5th ground, Ms. Tairo argued that the trial magistrate ignored PW5's evidence that upon examining PW1 he had found no bruises and anus muscles were normal. She cited the case of Pascal Yoya @Maganga vs Republic, Criminal Appeal No. 248 of 2017 in which the court referred to Marwa Wangiti Mwita and Another vs Republic [2002] TLR 37 arguing that there should have been explanation as to the delay or failure to conduct a medical examination the trial court ought to have conducted an enquiry but did not do so, which was also the same in this case. On the 6th ground, she submitted that there were inconsistencies on time the incident took place. PW1 stated the incident took place at 14:30hrs while PW4 stated the same was reported to him at 15:30hrs. And, on the last ground the counsel submitted that the prosecution did not prove its case beyond reasonable doubt. PW1's evidence was, as demonstrated above, contradictory; the evidence of PW1, PW2 and PW3 was similar contractor. Whereas PW1 and PW2 stated to have reported the incident to PW3 the same day but PW3 stated that the incident was not reported to him on the material day since he had guests and could not see them. She also argued that PW2 stated that he went closer to the store where he saw the appellant carnally knowing PW1 against the order of nature but PW1 stated that the door of the store was closed. In a sum of these, she prayed that the court allow the appeal and proceed to quash conviction and set aside the sentence. Page 5 of 19 In reply, Mr. Makule submitted on the 1st ground separately and having finished, he clustered the 2nd, 3rd and 4th together and the 5th and 7th grounds together. On the 1st ground, he submitted that oral confessions are valid so long as the suspect was a free agent when he confessed. He argued that the appellant confessed to PW3 to have committed the offence as seen in page 13 of the proceedings. He then argued that an oral confession by the suspect may itself be sufficient to convict the accused as held in Director of Public Prosecutions vs Nuru Mohamed Gulamrasul [1988] TLR 82 and Posoio Wilson @ Mwaivego vs Republic Criminal Appeal No. 613 of 2015 (unreported). He also argued that the appellant did not cross examine PW3 on the alleged confession and made no indication that he was beaten or tortured. The appellant's failure to cross examine PW3, he argued, implied that he accepted the same to be true as held in Rashid Roman Nyerere vs Republic, Criminal Appeal No. 105 of 2014 (unreported). On the 2nd, 3rd and 4th grounds, Mr. Makule replied that PW1 and PW2 were recorded after they had promised to tell the truth and therefore section 127(2) of the Evidence Act was complied with as seen on page 6 and 8 of the typed proceedings. He argued further that the testimonies of these witnesses were original, true and authentic hence acceptable as per Wambura Kigingi vs Republic Criminal Appeal No. 301 of 2018 CAT (unreported). He submitted further that the evidence of PW1 was corroborated by PW2 who was an eye witness. He argued that although they were both children, the section 127(3) of the Evidence Act allows their evidence to corroborate each other's evidence. As regards contradiction, he argued that there was no contradiction that went to the Page 6 of 19 root of the case or anyhow prejudiced the appellant. He proceeded that, as the contradictions were minor and did not corrode the credibility of the case, they should not be accorded weight and in fortification he cited Dickson Elia Nsamba Shapwata and Another vs Republic Criminal Appeal No. 98 of 2007 (unreported). On the 5th and 7th ground Mr. Makule submitted that the defence evidence was considered and it was found that the appellant had just generally denied

the charge. His defence case had not raised any doubt on the prosecution evidence and therefore the trial magistrate proceeded to convict the appellant. He concluded with a citation of the authority in *Seleman Makumba vs Republic* [2006] TLR 379 which held that the evidence of the victim of sexual offence is the best evidence. Thus, in this case, the testimony of PW1 which was anyhow uncontradicted was the best and capable of sustaining conviction. I have considered the submissions of both parties as well as the records of the trial court. The task ahead of me is to revisit the evidence on record in the light of the grounds raised by the appellant and make finding as to whether the charges were proved beyond reasonable doubt. I prefer to start with the as it challenges the credibility of the testimony of PW1, the victim of the offence and most material witness. Ms. Tairo has argued that the testimony of this witness as well as of his fellow pupils who are, PW2 and PW5 should be disregarded as they are offensive of the requirement of section 127 (1) and (2) of the Evidence Act. Her main argument is that, the record is silent on the questions posed to them in solicitation of their undertaking to tell the truth. The learned State Attorney has on the other Page 7 of 19 hand argued that there was no fault as the procurement of the testimony of these three witnesses was in good order. The contested provision, permits children of tender age defined under section 127(4) as children whose apparent age is not more than fourteen years, to testify in court as witness under oath or without oath but upon making an undertaking to tell the truth and not lies. The provision has been applied in multiple decisions by the Court of Appeal including in *Godfrey Wilson vs Republic*, Criminal Appeal No. 168 of 2018 [2019] TZCA 109; *Issa Salum Nambaluka vs Republic* (Criminal Appeal 272 of 2018) [2020] TZCA 10, *Shomari Mohamed Mkwama Versus Republic* (Criminal Appeal No. 606 of 2021) [2022] TZCA 644; *Ramson Peter Ondile Versus Republic* (Criminal Appeal No. 84 of 2021) [2022] TZCA 608; *Omary Salum @Mjusi Versus Republic*, (criminal Appeal No. 125 of

2020) [2022] TZCA 579; *John Mkorongo James vs Republic* (Criminal Appeal 498 of 2020) [2022] TZCA 111 and; *Mathayo Laurance William Mollel vs Republic* (Criminal Appeal 53 of 2020) [2023] TZCA 52 (all reported in Tanzlii) and the position is now settled that, a child of tender age may give evidence in court without oath but prior to recording such testimony, the trial court must require him to make an undertaking to tell the truth. In the present appeal, the record show that, PW1 was 13 years old when he testified in court, PW2 was 11 years while PW4 was 15 years. Going by the definition of a child of tender age under section 127(4), it is obvious that, section 127(2) does not apply to PW5 as, at the time he appeared and testified as a witness in court, he was no longer a child of tender age hence not subject to section 127(2). The trial court record strongly Page 8 of 19 suggests so as after his personal profile was recorded, he was sworn and proceeded to give evidence on oath. The appellant's lamentation with regard to procedural irregularity in the procurement of PW5 testimony is thus devoid of merit. As for PW1 and PW2, they were undoubtedly of tender age and subject to the provision of section 127(2). Ms. Tairo does not fault the trial court for omission to procure the undertaking but has argued that much as these two witnesses made the undertaking to tell the truth and not lies, there was a procedural impropriety in the procurement of such undertaking as the set of questions which were put to them preceding the undertaking were not recorded in the proceedings. She has

argued that the promise should be evidently seen on record. Her argument is based on the authority in *Godfrey Wilson vs Republic vs Republic* (supra) in which the Court of Appeal provided some guidance on how the promise to tell the truth should be procured. It stated: "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 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. Thereafter, upon making the promise, such promise must be recorded before the evidence is taken." From the wording above, it is crystal clear that, much as it is preferable that the non-exhaustive set of questions above be posed to the child witness, recording of the same is not a mandatory requirement and the Page 9 of 19 omission to record them in the proceeding is non-fatal and incapable of vitiating the proceedings as held in *Mathayo Laura nee William Mollel vs Republic* (supra). In the present case, the following excerpt from page 6 and 8. Demonstrate what transpired in court on 15/3/2021 when the PW1 and PW2 appeared in court as witnesses and their respective testimonies recorded. "PW1: JR, Mashati Olele, student of St. Johnvian Primary School standard six, Christian, 13 years old. Court: Witness had the intelligence to speak and this court asked him if he promises to speak the truth. Witness: I promise to speak the truth before this court and not to lie." And with respect to PW2, page 8 of the proceedings show as follows: PW2: Samwel Festo Kilawe, Mwika, studying at St. Johnvian Primary School standard six student, Christian and Eleven (11) years old. Court: The witness had the intelligence to speak and this court asked him if he promises to speak the truth. Witness: I promise to speak the truth before this court and not lie." Having made the undertaking which was recorded in their respective words, they proceeded to testify. From this self-spoken proceeding, I find nothing to fault the court as the undertaking to tell the truth and not lies was not only procured but recorded in the PW1 and PW2's respective words. In my firm view, the argument by Ms. Tairo would have held water had the undertaking not been recorded which is not the case. Accordingly, the 3rd ground of appeal fails for lack of merit. Page 10 of 19 In the 6th grounds to which I now turn, Ms. Tairo has argued that the testimony of PW1 ought not to have been relied upon in convicting the appellant as it was tainted with inconsistencies, was at variance with the testimonies of other witnesses, PW2, PW3 and PW4, in particular. Also, it was uncorroborated. With regard to inconsistencies, the law recognizes that there may be certain inconsistencies in the accounts of witnesses in which cases, the court must resolve them one way or other by looking at the entire evidence and ascertaining whether they are minor and inconsequential or they are material and consequential to the case. This was well explained in *Dickson Elia Nsamba Shapwata vs Republic* (supra) where the Court stated thus; "In evaluating discrepancies, contradictions and omissions, it is undesirable for a court to pick out sentences and consider them in isolation from the rest of the statements. The court has to

decide whether the inconsistencies and contradictions are only minor, or whether they go to the root of the matter. (See: Mohamed Said Matula v Republic [1995] TLR3). The learned authors of Sarkar, The Law of Evidence 16th edition, 2007, have this to say at page 48 - "Normal discrepancies in evidence are those which are due to normal errors of observation; normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of the occurrence and those are always there however honest and truthful a witness may be. Material discrepancies are those which are not normal and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorized. While normal discrepancies do not corrode the credibility of a parties case, material discrepancies do." Page 11 of 19 Thus guided, I will now proceed to resolve the discrepancies ironed out by the appellant starting with the argument that PW1 contradicted himself when he said that while being molested, he was bent but also asserted that he saw white fluid on the appellant's penis. Much as it may be logical to question how did PW1 saw the white fluid on PW1's penis while he was bent, I think this is not a paradoxical issue as it matters less whether and at what point did PW1 saw the white fluid on the appellant's penis as the said fluid is not an ingredient of the unnatural offence against which the appellant was charged. For similar reason, I will not waste my time on the argument that PW2 stated that he saw the white fluid as they were washing the pants. The argument as to discrepancies as between PW1 and PW2 as to why PW2 and Remid remained around after PW1 was called and locked into the store by the appellant, similarly attract no weight and so is the reason as why they pipped into the store as none of which go to the root of the case. It matters less whether they pipped out of curiosity or otherwise. What matters is what they saw. PW2 told the court that, as they were peeping, they heard the victim shouting and they saw his short pants was removed (see the hand written proceedings) a narration which corroborated PW1's testimony that, he felt pain when the appellant was inserting his manhood into his anus and as a result he cried. The next alleged discrepancy which also attract no weight is the time at which the offence was committed and the time it was reported to PW3. Ms. Tairo argued that PW1 and friends stated that the incident took place at 14:30hrs and thereafter they went to PW4 to report the same but PW4 Page 12 of 19 stated that the three had come to report to him around 15:45hrs and PW3 stated that when PW1 and his friends went to report the incidence to him, they told him the offence was committed at 15:00hrs. With much respect to the counsel, the difference of 30 minutes time is too minor to cause the prosecution's case to flop. In any case, the testimony by PW1 that the offence was committed at 14:30hrs was not contradicted in cross examination. His account of the time, obviously supersedes PW3 and PW4 who were not at the scene and their account is totally based on what was relayed to them by PW1 and his friends. The 6th ground of appeal consequently fails. Having resolved the 3rd and 6th grounds of appeal, I now turn to the 5th ground in which Ms. Tairio has lamented that the evidence of the doctor was ignored. I find no need for wasting time on this point as the evidence of the doctor who testified as PW5 was thoroughly considered by the trial magistrate as firmly exhibited in page 7 and 12 of the trial court judgment where, apart from considering the evidence of the medical doctor vis- a- vis the narration of the victim, the trial magistrate extensively cited

authorities from the Court of Appeal in which it was consistently held that, penetration which is the crucial ingredient of rape/unnatural offence is not proved by presence of seamen's, bruises on the victim's vagina/anus. Thus, the absence of seamen and bruises does not prove that there was no penetration. I need not cite nor reproduce these authorities as they have been thoroughly and extensively reproduced in the trial court judgment. For the purpose of this appeal, it suffices to note that I fully subscribe to the position held by the trial court and the cited authorities which also state that, expert evidence, including that of medical doctors Page 13 of 19 is in the nature of opinion and cannot supersede the testimony of the victim of sexual offence, which the law regards as the best evidence. That said, the 5th ground of appeal fails. The 1st ground of appeal concerns an oral confession made by the appellant at the school after he was questioned by the fellow workers. Ms. Tairo has argued that the trial court erroneously relied on the said confession which was procured contrary to section 57(1) of the Criminal Procedure Act as the appellant was not a free agent when he made it. On the other hand, Mr. Makule has argued that, the trial court did not err as such statement was a valid oral confession made by the appellant when he was a free agent. The confession now disputed, is reflected in the testimony of PW3 a teacher at the school who testified that, after the matter was reported to the school administration, the appellant was called and question whereby he admitted to have committed the alleged offence and asked for forgiveness. The same is also reflected in the appellant's defence whereby, testify as DW1 he told the court that on 13/11/2020 he was called to the sister's (nun) office where he found the nun and a teacher. They asked him if he committed the offence but he denied but later on, he admitted and signed a document in admission but he did so because he was afraid of losing his job as he had been told that if he does not admit he will be fired. As the document allegedly signed by the appellant was not produced in court, all what the trial court had was an oral confession. The law recognize and accords weight to oral evidence as it does to written confession hence the trite law that, an oral confession of guilty made Page 14 of 19 before a reliable witness is admissible provided that it is proved that it was made when the suspect was a free agent (See, Director of Public Prosecutions vs Nuru Mohamed Gulamrasul (supra); Posoio Wilson @Mwaivego vs Republic (supra); Director of Public Prosecutions vs Orestus Mbawala @ Bonge (Criminal Appeal No. 119 of 2019) [2020] TZCA 1728 (Tanzlii); Ngusa Sita Mabunda vs Republic (Criminal Appeal No. 254 of 2017) [2021] TZCA 267(Tanzlii); Chamuriho Kienge @Chamuriho Julias vs Republic (Criminal Appeal No. 597 of 2017) [2022] TZCA 98 (Tanzlii) and; Vasco Lwenje and Another vs the Director of Public Prosecution (Criminal Appeal No. 220 of 2020 [2022] TZCA 786 (Tanzlii)).The law requires that, further to being voluntary, a confession whether oral or written, must indicate the accused's admission to all ingredients of the offence as held in Vasco Lwenje and Another vs the Director of Public Prosecution (supra) at page 11 where it was stated thus; "With respect, Mr. Mgaya's urging for a retrial on the basis of the evidence of oral confession hangs in the balance as it will become clearer shortly. We are mindful that in law, a confession may be oral or in writing provided it is voluntarily made admitting the ingredients of the offence. See: Boniface Mathew Malyango & Another v. Republic, Criminal Appeal No. 358 of 2018 (unreported), Director of Public Prosecutions v. Nuru Mohamed

Gulamrasul [1988] T.L.R. 82 and Mohamed Manguku v. Republic, Criminal Appeal No. 194 of 2004 (unreported)." Emphasizing this point in Chamuriho Kienge @Chamuriho Julias vs Republic (supra), the Court stated thus; "It is settled that an oral confession of guilt made by a suspect before or in the presence of reliable witnesses, be they civilian Page 15 of 19 or not, maybe sufficient by itself to ground conviction against the suspect. See: The Director of Public Prosecutions vs Nuru Mohamed Gulamrasul, [1988] T.L.R. 82. In Mohamed Manguku vs Republic, Criminal Appeal No. 194 of 2004, quoted in Posoho Wilson @ Mwalyego vs Republic, Criminal Appeal No. 613 of 2015 and Tumaini Daudi Ikera vs Republic, Criminal Appeal No. 158 of 2009 (all unreported). The Court insisted that such an oral confession would be valid as long as the suspect was a free agent when he said the words imputed to him. It means therefore that even where the court is satisfied that an accused person made an oral confession, still the trial court should go an extra mile to determine whether the oral confession is voluntary or not." In the present case, the requirement to ascertain the voluntariness of the said confession was overlooked. This was a lucid misdirection considering that the appellant retracted the confession as he told the court that while making the confession, he was not a free agent as apart from being beaten he was threatened that he would loose his job if he did not admit. It was therefore incumbent for the trial court to conduct an inquiry to determine the voluntariness and since it did not, the confession is devoid of any weight and is disregarded. The first ground of appeal passes. The remaining grounds, that is, the 2nd, 4th and 7th are closely related. They all challenge the trial court for convicting the appellant based on the evidence of PW1 which was uncorroborated and the case against the appellant was not proved beyond reasonable doubt. Following the finding in the preceding grounds. The questions to be answered is whether, in the light of the finding above, it can still be said that the charges against the appellant was proved beyond reasonable doubt. It is trite law that the evidence of the victim in sexual offences is the best evidence and if found credible, it suffices to sustain a conviction even in the absence of corroboration (see section 127(6) of the Law of Evidence Act and Seleman Makumba vs Republic (supra). It is also trite that, such evidence should not be taken wholesomely. It should be carefully scrutinized to determine its credence in avoidance sending innocent persons to jail (see Issa Juma Idrisa & Another vs Republic (Criminal Appeal 218 of 2017) [2020] TZCA 206 As stated earlier on, the appellant herein was charged of unnatural offence contrary to section 154(l)(a) and (2) of the Penal Code which reads; "154(1) Any person who—

- (a) has carnal knowledge of any person against the order of nature: or
- (b) N/A
- (c) N/A
- (2) Where the offence under subsection (1) is committed to a child under the age of eighteen years the offender shall be sentenced to life imprisonment." The main evidence against him was that of the PW1, the victim as corroborated by other witnesses notably PW2. In my scrutiny of the proceedings, I have found his narration of the incident firm and eloquently

stated how the appellant lead him into the store, locked him in, ordered him to remove his pant and removed his an afterwards, he ordered him to bend and he inserted his penis which he had lubricated with oil into his anus while he felt pain and cried. The trial court which was best placed to Page 17 of 19 determine the credibility of the witness found PW1 credible and since I was not presented with any material to the contrary, I find no reason to doubt him. Besides, his narration was well corroborated by PW2 who not only saw the victim and the appellant entering the store, but peeped into the store and saw the victim's pants undressed. In the absence of a better explanation as to why the victim had undressed his pant, it appears logic that, if the victim was molested in the store as claimed, the one who molested him is none other than the appellant. None of these two witnesses was controverted in the course of cross examination. They all maintained what they said during examination in chief. Thus, the trial court cannot be faulted for holding these two witnesses credible. In the foregoing, I entertain no flicker of doubt that the case against the appellant was proved beyond reasonable doubt. The 2nd, 4th and 7th grounds of appeal are thus without merit. Before I pen off, I should resolve a lucid anomaly apparent on the sentence passed by the trial court which I observed in the course of scrutiny of the lower court record. As per the provision above stated, the appropriate sentence for a person convicted of an unnatural offence against a child below 18 years old is life imprisonment. In the present case, the victim was a child aged 12 years hence within the realm of section 154(2) of the Penal Code but the appellant herein was mistakenly, upon conviction, sentenced to a prison term for 30 years. As this error cannot be left uncured, I invoke the powers vested in this court by section 44(1) of the Magistrate Courts Act [Cap 11 RE 2019] set aside the sentence of 30 years imprisonment and substitute for it the appropriate sentence. Page 18 of 19 Accordingly, save for the 1st ground of appeal which I allow, the remaining 6 grounds of appeal fail and the appeal is dismissed to that extent. Further, the sentence of 30 years imprisonment is substituted with life imprisonment. It is so ordered. DATED and DELIVERED at MOSHI on this 22nd day of May 2023. Page 19 of 19

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