

TANZANIA / JUDGMENT

RAMADHANI MIRAJI RAMADHANI

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IN THE HIGH COURT OF TANZANIA DODOMA SUB - REGISTRY AT DODOMA DC. CRIMINAL
APPEAL NO. 20352 OF 2024 (Arising from Criminai Case No. 40566 of 2023 in the District Court of
Kongwa) RAMADHANI MI RAJ I RAMADHANI..... APPELLANT VERSUS THE
REPUBLIC..... RESPONDENT

JUDGMENT

31st October & & December, 2024 MUSOKWA, J. The appellant herein was arraigned before the District Court of Kongwa (trial court), charged with two counts. The 1st count being rape, contrary to sections 130 (1) and (2) (e); and 131 (1) of the Penal Code, Cap. 16, R.E. 2022 (Penal Code). The 2nd count is unnatural offence, contrary to section 154 (1) (a), and (2) of the Penal Code. The brief and common facts are that the appellant allegedly had carnal knowledge of the victim, both through the order of nature and against the order of nature with a girl aged 10 years. It is alleged that the incident occurred between the months of October and November, 2023 in Kibaigwa Township, in Kongwa District, Dodoma Region. The victim of the offences, will be referred i to as "PW3" or "the victim"/ in order to conceal her identity and protect her dignity. The trial court found the appellant guilty of the charged offences. Consequently, the appellant was sentenced to serve thirty (30) years imprisonment for the 1st count and life imprisonment for the 2nd count. Aggrieved by the decision thereof, the appellant lodged the instant appeal containing eleven initial grounds of appeal. With leave of this court, the appellant filed six additional grounds of appeal. On the date scheduled for hearing of this appeal, the appellant appeared in person, unrepresented. The respondent was represented by Ms. Patricia Mkina, learned state attorney. Submitting in support of the appeal, the appellant at the onset prayed that this court should adopt his grounds of appeal. The appellant proceeded to challenge the conduct of the trial, alleging that it was tainted with procedural irregularities, as stipulated in the 4th ground of the appeal. According to the appellant, failure by the prosecution to adhere to the mandatory procedures of a criminal trial as provided for under the law, resulted in the miscarriage of justice. In addressing the 1st, 2nd, 3rd, 6th, 7th, 8th, and 10th grounds of appeal the appellant further submitted that the prosecution failed to prove the charge 2 against him beyond all reasonable doubt. The appellant vehemently contended the evidence adduced by the prosecution at the trial, for reason that the credibility of the prosecution witnesses was questionable. The appellant attacked the testimony of the victim, PW3. According to the appellant, if in fact the alleged acts were committed against her, it would have been impossible for the victim to make

her own way home, having sustained serious injuries as a result of the incident thereof. Proceeding with his submissions, the appellant averred that there was notable variation between the testimonies of PW1 the aunt, and PW3, the victim. The victim testified that she does not know the name of the appellant. On the other hand, PW1 who was not present at the scene of the crime, mentioned the name of the appellant. This is absurd because PW1's testimony was based on narration of the incident given by PW2. The appellant further stated that the grandmother, who was living with the victim, was a material witness and should have been summoned before the trial court to testify. Thus, the testimony of PW1, the aunt, ought to have been corroborated with the testimony of either the grandmother, or even a local government leader. Further contending the testimony of the medical doctor, PW2, the appellant asserted that while this witness testified that the victim was penetrated by a blunt object, the nature of the blunt object 3 was not explained. Thus, the said testimony was misleading. Additionally, while the findings of the medical examination were to the effect that the victim was found to have been infected with sexually transmitted diseases, no evidence was adduced to link the appellant to this fact, to prove that he was the source thereof. Concluding his submissions, the appellant reiterated that the prosecution failed to prove their case to the required legal standard in a criminal trial. Accordingly, the appellant prayed for the court to consider the instant appeal favorably for the interests of justice. In response thereof, Ms. Mkina learned state attorney took the floor and prayed for leave to address collectively the 1st, 2nd, 3rd, 6th, 7th, 8th, 10th and 11th initial grounds of appeal; including the 2nd, 3rd, 4th, 5th and 6th additional grounds of appeal. The leave was granted by this court and the respondent's counsel firmly opposed the appeal. On the onset, it was submitted that the prosecution proved both the 1st and 2nd counts beyond reasonable doubt, contrary to the assertions of the appellant. As regards to the 1st count of rape, the respondent's counsel submitted that the prosecution adduced sufficient evidence to prove the ingredients of the charged offence through the witnesses who were paraded before the court, including the victim. The testimony of PW3, the victim was elaborate, and detailed the manner in which the perpetrator did the sexual 4 acts amounting to the charged offences. This witness testified that the appellant would stalk her while on her way home from school. The appellant would then force her to go to his house, where he would shove pieces of clothing into her mouth so that she does not make noise. The appellant would then undress her and rape her. Thus, Ms. Mkina submitted that there was penetration of the victim by the appellant. Ms. Mkina further asserted that the testimony of the victim is corroborated with the testimony of the medical doctor, PW2 who conducted a medical examination of the victim and found bruises, and swelling in her private parts. The PF3 was tendered in evidence and admitted as "Exhibit P2". In establishing statutory rape, the age of the victim must also be ascertained. The learned state attorney averred that the age of the victim was established by the testimony of the victim and the testimony of PW1, the aunt of the victim. Both these witnesses stated that the victim was aged 10 years, being born on 12th November, 2013. The birth certificate was further tendered by PW1, admitted and marked as "Exhibit P1". Thus, the offence of rape was proven beyond reasonable doubt. On the 2nd count, which is unnatural offence, the respondent reiterated the testimony of the victim to the effect that after raping her, the appellant would then proceed to have carnal knowledge of her against the order of 5 nature. The testimony of the medical doctor corroborates

the testimony of the victim as he found bruises in the anal areas of the victim. The tendered PF3 also established the said facts. In further rebuttal of the appellant's assertions, the learned state attorney stated that in sexual offences, the best evidence is that of the victim. In the instant case, the victim clearly identified the appellant as the perpetrator. The facts provide that the offences were committed repeatedly between October to 29th November, 2023. Considering the fact that it was not a one-time event, the victim had encountered the appellant on several occasions. Therefore, the victim was in a position to provide a detailed description of the appellant, and was further able to identify him. Ms. Mkina stated that the evidence also provide that the appellant lived in the neighborhood, hence the appellant was not a total stranger to the victim. In reference thereto, she referred to pages 17 to 19 of the printed proceedings of the trial court. Ms. Mkina admitted that the victim was not able to name the appellant. However, the victim was able to provide a detailed description of the appellant's physical features, which sufficed to identify him. The testimony of the victim was corroborated with the testimony of PW1 who was able to identify the appellant based on the earlier description offered by the victim. The respondent's counsel further conceded that there was a slight variation between the testimonies of PW1 and PW3; as compared to the testimony of PW4 in relation to the time of the commission of the charged offences. That while the testimony of PW1, and PW3 are similar in that they both stated that the incident occurred at 16:00hours when the victim was returning home from school; PW4 on the other hand, testified that the incident occurred once at 20:00hrs. However, Ms. Mkina submitted that the aforementioned variation is minor and does not suffice to discredit the evidence adduced by the prosecution as the key ingredients of the charged offences were sufficiently proven. Ms. Mkina addressed the appellant's assertions that evidence was not adduced, to prove that the sexually transmitted diseases which the victim was found with, were transmitted by the appellant. In response thereto, the learned state attorney submitted that the description of the appellant by the victim sufficed to identify him and to link him to the charged offences. In rebuttal of the allegation that the cautioned statement was admitted unprocedurally, Ms. Mkina firmly contended this ground was baseless. 7 Submitting on this point, it was stated that the records are silent as to the admission of a cautioned statement. Along the same line of argument, the respondent asserted that the PF3 was tendered in accordance with the requirements of the law, as provided for under section 240 (1) of the Criminal Procedure Act, Cap. 20, R.E. 2022 (CPA). As regards to the purported delay in taking the victim to the hospital, the respondent explained that while the incident was reported at the police station on 29th November 2023, the police officers directed the complainants to return to the police station the following day on 30th November, 2023. It is for this reason that the victim was not taken to the hospital on the same date when the incident was reported. Further, contrary to the assertions of the appellant that the trial court did not consider his defence, Ms. Mkina contended that the appellant's defence was duly considered as reflected at page 11 of the impugned

judgment.

The appellant alleged that the testimony of the victim was recorded unprocedurally for administering an oath while the victim was aged 10 years old. In attempt to respond, the respondent's counsel referred to pages 16 and 17 of the printed trial court proceedings. The said proceedings indicate that the court recorded the testimony of the victim 8 under oath, upon being satisfied that the child understood the implication of taking an oath. Ms. Mkina referred to section 127 (2) of the Evidence Act, Cap. 6, R.E. 2022 (the Evidence Act) which provides that the testimony of a child of tender age may be recorded under oath, if the court is satisfied that the child comprehends the nature of taking oath. In concluding her submissions in reply, Ms. Mkina stated that the prosecution is at liberty to identify and procure the attendance in court of the witnesses they consider necessary to prove their case. In this regard, the victim's teacher and the grandmother, were not considered by the prosecution to be material witnesses to the case at hand. The respondent referred to section 147 of the Evidence Act to cement this point. In addition to the aforementioned, the respondent submitted that conducting an identification parade was not necessary under the circumstances. The reason is that the appellant was not a complete stranger to the victim. In view of the foregoing, the learned state attorney prayed that this court should find the appeal devoid of merits and consequently to dismiss it. In rejoinder, the appellant prayed to adopt his submission in chief. The appellant further reiterated his prayer that the court should find that the evidence adduced by the prosecution was wanting of the required legal 9 standard in a criminal case. Accordingly, the court should quash and set aside the conviction and sentence imposed by the trial court. Having due regard to the submissions by the parties and the records thereto; this court is called upon to determine whether or not the evidence adduced by the prosecution at the trial court, sufficed to warrant the conviction and the sentence against the appellant. The position of the law is to the effect that in a criminal trial, the burden of proof is on the prosecution to prove the case against the accused person beyond reasonable doubt. This was deliberated by the Court of Appeal of Tanzania (CAT) in the case of *Twinogore Mwambela vs The Republic*, Criminal Appeal No. 388 of 2018 (unreported) whereby it was held that: - "...In saying so, we are not shifting the burden of proof onto the appeiiant. Rather, we are alive to the position of the law that, an accused person //> a criminal trial, can only be convicted on the strength of the prosecution case and not on the basis of the weakness of his defence. "[Emphasis added] In proving the 1st count, which in the present case is statutory rape as the victim is below the age of 18 years; the prosecution had the duty to prove the age of the victim. The prosecution further had to prove penetration of the appellant's penis into the victim's vagina. In the circumstances, io consent is immaterial as provided for under section 130 (2) (e) of the Penal Code. The appellant was further charged with unnatural offence, as the 2nd count. The prosecution maintained the same evidence as those in the 1st count, as regards to the victim, the dates and place of the commission of the alleged offence. Similarly, in proving the 2nd count, the prosecution had a duty to prove the age of the victim. The prosecution also had the duty to prove that the appellant had carnal knowledge of the victim against the order of nature. For clarity, the relevant provision of the Penal Code provides as follows: - Section 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 [emphasis added] In the instant appeal, the grounds of appeal mainly allege failure by the prosecution to prove the charges against the appellant beyond reasonable doubt. This is indicated in the 1st, 2nd, 3rd, 4th, 6th, 7th and 10th initial grounds of appeal; and further in the 2nd, 3rd and 5th of the additional grounds of appeal, filed with the leave of this court. The celebrated principle in criminal law as regards to adducing evidence in sexual related offences, is that the best evidence is the testimony of the victim. This is in line with the provision of section 127 (6) of the Evidence Act which stipulates as hereunder: - Section 127 (6) Notwithstanding the preceding provisions of this section, where in criminal proceedings involving sexual offence the only independent evidence is that of a child of tender years or of a victim of the sexual offence, the court shall receive the evidence, and may, after assessing the credibility of the evidence of the child of tender years as the case may be the victim of sexual offence on its own merits, notwithstanding that such evidence is not corroborated, proceed to convict, if for reasons to be recorded in the proceedings, the court is satisfied that the child of tender years or the victim of the sexual offence is telling nothing but the truth" [Emphasis added] According to the above provision of the law, the court, upon ascertaining the credibility of the witness who is also the victim of the sexual offence, may proceed to enter conviction, without collaboration provided the court is satisfied that the victim is telling nothing but the truth. 12 The law further outlines the procedure for recording the testimony of a child of tender years, under section 127 (2) of the Evidence Act. The section provides that: - Section 127 (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. [emphasis added] In view of the foregoing provisions, the testimony of the victim sufficed to warrant the court to enter conviction and sentence against the appellant even without corroborative evidence. In emphasis, it was not mandatory that the testimony of this witness be taken under oath, as long as the promise of the child to tell the truth was procured and duly recorded by the trial court. The records of the trial court indicate that the testimony of the victim was taken under oath. However, it is further evident from the records that prior to recording the victim's testimony, the trial court tested the competency of the child to determine whether the child comprehends the nature of taking an oath. This is reflected at pages 16 to 17 of the trial court proceedings, as reproduced hereinunder for ease of reference: - 13 PP: The case is coming for a hearing. I have one witness. ACCUSED: I have no objection COURT: THE PROSECUTION CASE IS CONTINUING. PW3: The victim, 10 years COURT: The witness is tender age so the court must examine the witness if she will promise to tell the truth or not. SIGNED BY S.M MWALILINO-SRM 08/02/2024 COURT: What is your name? WITNESS: My name is (victim) COURT: How old are you? WITNESS: I am 10

years old. COURT: What is the name of your father WITNESS: The name of my father is Issa. COURT: Which class are you studying? WITNESS: I am in class six. COURT: Which religion did you profess? WITNESS: I am a Christian. COURT: Which denomination are you? WITNESS: lama Roman. COURT: Have you received communion WITNESS: Not yet. COURT: Do you understand the meaning of oath? WITNESS: I understand the meaning of oath that you take oath to God to fulfill something. 14 COURT: Do you understand the meaning of telling the truth, WITNESS: Yes, I do understand, if you tell the truth God will love you. COURT: Are you promising us that you will tell the truth WITNESS: I promise you that I will tell you the truth and not lie. COURT: The court observed that the witness is under tender age, she understands the nature of oath and promised to the court that she will tell the court the truth and not lie. Therefore, the testimony of the witness is taken under oath. SIGNED BY S.M MWALILINO - SRM 08/02/2024 The appellant under the 4th additional ground of appeal, asserted that the trial court erred to record the testimony of the child of tender age under oath. Contrary to the assertions of the appellant; this court is of the view that due diligence was undertaken by the trial court to establish that the child was well aware of the consequences of giving testimony under oath, before proceeding thereto. In any case, the appellant has not established violation of the law in that regard. On that basis, this ground of appeal is baseless and fails. For the purpose of clarity, the CAT case of Shomari Mohammed Mkwama vs Republic, Criminal Appeal No. 606 of 2021, 15 (unreported) is relevant on this point. At pages 6 to 8 of the said judgement, it was held as follows: - '14 child of tender age under section 127 (4) of the Evidence Act, means a child whose apparent age is not more than fourteen years since birth. If such a child is to give evidence in court, the above quoted section of the law, must be complied with. The issue for resolution in this ground is therefore whether, in taking the evidence of PW1 section 127 (2) of the Evidence Act was not complied with... According to the record, nine questions were put to the child. The following details were inquired from her and she responded to them as appropriate; her name, her age, the person with whom she lived, whether she was schooling or not, her religion, whether she knew the difference between truth and falsehood and the consequences of each, and finally she was asked: Question: Do you promise to tell the truth? Answer: I promise nothing but to tell the truth. The complaint of the appellant is that the appellant was not asked whether she knew the meaning and nature of oath before she could give the promise above... If, it is a matter of asking general questions to a child witness before she can promise to tell the truth, the court satisfactorily performed that function as indicated above... Thus, section 127

- (2) of the Evidence Act was not offended in any way" [emphasis added] The victim further provides an elaborate narration of the manner in which the appellant committed the alleged offence. The narration is found at page 17 of the proceedings of the trial court and is recorded as follows: - 16 My name is (victim) I am 10 years old... I was born on 12/11/2013. I live in Kibaigwa, I live with my grandmother. I am a pupil at Miembeni Primary School at standard six. Between October 2023 to 29 November 2023, I was at Kibaigwa, when I was going home from school. When I was near to arriving at my aunt called Nasma, I knocked

on the gate of my aunt. Then the accused called me, then he pulled me and brought me to his room. From my aunt to the accused is like 30 steps. He pulled me to his room other renters were absent. Inside his room, there were clothes, pieces of clothes, and cans (makopo). The accused put the piece of clothes in my mouth and covered my face with the bed sheet, then the accused undressed all my clothes because I wore my school uniform and I remained naked. I never made noise because he covered my mouth with pieces of clothes, then the accused undressed his clothes and inserted his penis into my vagina. Then he turned to my anus then he inserted his penis into my anus. Then the accused informed me to wash my vagina and anus then he informed me not to disclose this information, then the accused informed me to wear the clothes and he threatened me to kill if I will disclose that information. The accused started to undress the trousers and then the shirt. I know the accused by his face. Many times the accused did this to me. The accused also was sending me to steal money from my grandmother. The accused did it when I came home from school around 16:00 hours in the evening my friends used to pass different ways. I can identify the accused person he is here sitting at the coach. The room of the accused had pieces of clothes and cans (makopo). Many times the accused required me to steal the money from my grandmother and I gave him. I used to steal 10,000 and 17 give the accused. The accused informed me that if I told my grandmother he would kill me. My aunt after being informed went to report to the police. My aunt sent me to the Hospital. They made an investigation and informed me that I was penetrated then I was given medicine, we returned to police and I explained it. I returned home then I went to the hospital for an injection. I did not know his name but I informed them through his face. I informed my aunt concerning the face of the accused that he has hair, red eyes, black, tall, and thin then my aunt informed my uncle, that the accused was arrested. Also, I informed my aunt where the accused lived. In the morning me, aunt, uncle and Tito we went to where the accused lived, the accused was absent, but we met with other renters, when they were informed about the incident, the neighbor said that it is true that one day the victim went there to the accused. One day there was a woman who told me about the incident then he asked me, I admitted to my aunt. [Emphasis added] SIGNED BY S.M MWALILINO - SRM 08/02/2024 While the law is clear that conviction and sentence can be entered solely basing upon the testimony of the victim; the prosecution paraded three other witnesses, to wit PW1, PW2 and PW4 to corroborate the testimony of the victim. The testimony of PW1, the aunt of the victim, was in line with the above narration of the victim. 18 Further, in proving the age of the victim, PW1 prayed to tender the birth certificate, which was admitted and marked as "Exhibit P1". The testimony of the victim herself also confirms as to her age whereby she testifies that she is 10 years old. The testimony of PW2, a medical doctor, further corroborates the testimony of the victim. This testimony is recorded at pages 13 and 14 of the printed proceedings of the trial court. The medical doctor testified that he made general investigations of the victim's vagina and anus. The findings of the medical examination revealed swelling and bruises in the aforementioned victim's private parts. The medical doctor tendered the PF.3 in support of his testimony which was admitted by the court and marked as "Exhibit P.2." Thereafter, the appellant had no objection to the tendering of the said Exhibit. I will proceed to address the

6th additional ground of appeal which relates to the issue of identification of the appellant by the victim. The appellant laments that the identification parade ought to have been conducted. According to the records and as indicated in the testimony of the victim, the appellant is a close neighbor. Further, the victim was able to provide a detailed description of the physical features of the appellant, despite the fact that she was not able to provide his name. 19 It is also on record that the appellant subjected the victim to unlawful sexual acts many times. In this regard, it is evident that the appellant was not a stranger to the victim as she had come into contact with him on several occasions. Thus, I concur with the submission of the respondent's counsel that in the present circumstances, there was in fact no need for an identification parade to be conducted. In the case of *Siasa Bernard @ Kasenga vs Republic*, Criminal Appeal No. 22 of 2010 (unreported) It was observed that: - "As stated above, the witnesses and the appellant were familiar to each other. If so, strictly speaking, there was no need for an identification parade. An Identification parade is normally held or conducted where the suspect or person sought to be Identified Is not known to the witnesses. In this case, since the appellant was known to the witnesses the identification parade was uncalled for, so to speak, because in effect the witnesses would naturally and obviously pick up the appellant in the circumstances" [emphasis added] Also, in the case of *Charles Nanati vs Republic*, Criminal Appeal No. 286 of 2017, (unreported) at pages 14-15, the CAT observed that: - "In the current appeal, It Is quite dear from the record that the appellant was not a stranger to PW1, PW2 and PW3 as he was known to them prior to the fateful Incident Thus, we subscribe to the above decision that the evidence of those witnesses was more of recognition and thus more reliable. Therefore, 20 without prejudice as correctly said by Ms. Mcharo, it is our considered opinion that there was no need of conducting the identification parade"[Emphasis added] The 8th additional ground of appeal alleges that the cautioned statement was admitted in violation of the law. This court is of the view that the appellant grossly misdirected himself as the records are silent on the admission of the cautioned statement. This ground is therefore merely an afterthought and fails entirely. Further, on the 11th additional ground of appeal, the appellant asserts that the trial court did not consider his defence. For the purpose of convenience, I will refer to page 11 of the impugned judgment which provides as follows: - "...the defence of the accused was to the effect that PW1 was seducing the accused person. After the accused denied PW1 if it is when this case was fabricated...Also, the accused person pointed out the contradiction of evidence of PW1, the victim and PW4. PW1 and the victim pointed that the incident took place at 16:00 hours while PW4 testified to the court that the crime was committed at 20:00 hours..." [emphasis added] 21 The records are clear as quoted above that the trial court duly considered the appellant's defence. Therefore, this ground of appeal is unmeritorious and is dismissed. Notably, this court suo mottu raised a concern on the composition of the judgment, including compliance of section 312(2) of the CPA. The parties were invited to address the court on this issue and the decision thereof was reserved to form part of this judgment. Briefly, the counsel for the respondent submitted that the said section provides that where an accused person is found guilty of an offence, the judgment must stipulate the offence to which the accused person is convicted; and the provision creating the offence

must also be indicated. The respondent's counsel made reference to page 12 of the typed judgment of the trial court, and asserted that the trial court did not specify the offences to which the appellant herein was convicted; neither did he state the provisions creating the said offences. Instead, the provision that was cited thereto was a general provision of the law which requires a conviction to be entered once an accused person has been found guilty of a charged offence. Referring to page 13 of the typed judgment of the trial court, the respondent's counsel stated that the sentence which was issued was 22 ambiguous. The reason being that while the trial court passed a sentence for each of the charged offences, the manner in which the said sentences were to be served was not clearly articulated. The law provides that in circumstances where several sentences have been entered against the accused person, the judgment should provide clearly as to whether the sentences will run concurrently or consecutively. In conclusion, the learned state attorney prayed for orders that the conviction and the corresponding sentences be quashed and set aside. Further, that the case file be remitted to the trial court to enter a proper conviction and the respective sentences in accordance with the law. The appellant, being a lay person, merely concurred with the prayers of the respondent, further beseeching the court to consider the matter favourably for the interests of justice. In addressing the issue at hand, I find it prudent to reproduce the relevant parts of the judgment of the trial court for ease of reference. Page 12 of the trial judgment relates to the conviction which was recorded as follows:- "...Having gone through the evidence of the prosecution and defence side, I find that the accused person is found guilty to the first count with the offence of rape contrary to section 130 (1) (2) (e) and 131 (1) of the Penal Code, 23 Cap. 16, R.E. 2022; and the second count of unnatural offence contrary to section 154 (1) (a) and (2) of the Penal Code, Cap. 16, R.E. 2022. I hereby convict the accused person under sections 235 (1) and 312

(2) of the Criminal Procedure Act, Cap, 20, R.E.

2022. "[Emphasis added] S.M. Mwaiiino- SRM 10/06/2024 In addition, the sentence is recorded at page 13 of the trial judgment as follows: - "... the accused person is found guilty of the offence and its sentence is provided under the Minimum Sentence Act, the victim is ten (10) years old, and she is under the age of eighteen years. I hereby sentence the accused person to the compulsory punishment in the first count to serve thirty (30) years imprisonment as per section 131

(1) of the Penal Code, Cap. 16, R.E. 2022. In the second count to serve life imprisonment as per section 154 (2) of the Penal Code, Cap. 16, R.E. 2022. S.M. Mwaiiino-SRM 10/06/2024 The determination of this issue will not detain me. I have read the recent case of Noah Sajilo and Another vs. the Republic, Criminal Appeal No. 478 of 2021 (unreported) delivered in January, 2024. At page 13 to 15 of the said case, the CAT held as follows: - "It is now trite law that omission to enter conviction before sentence, is not a fatal ailment as the same is curable under section 388 of the CPA. The Court in a number of cases has insisted on the same, for instance in the case of Amitabachan s/o Machaga @ Gorong'ondo vs Republic, Criminal Appeal No. 271 of 2017 (unreported) it was held that: "Ordinarily we would have remitted the

record to the High Court for it to enter the conviction so as to make the matter be properly before us for determination on the merit. However, both attorneys, for the appellant and for the respondent urged us to proceed with the hearing and determination of the appeal to its logical conclusion because on the merit, the justice of the case militates against remitting it to the High Court. We readily agreed. Although we are aware that an appeal is not properly before us where no conviction has been entered by the trial court, we think it is not always that such omission to enter a conviction will necessarily lead to an order of remission of the record to the trial court especially, as in this case, where the Justice of the case demands otherwise. In other cases, it has been considered prudent to treat the omission as a mere slip and the Court has deemed the conviction to have been entered. See the case of Imani Charles Chimango v. Republic Criminal Appeal No. 382 of 2016 (unreported). We shall therefore ignore the omission and proceed with the determination of the appeal on the merit" [Emphasis added] Based on the cited case, the omission to enter conviction before sentence is not fatal and the same is curable under section 388 of the CPA. In that regard, the said omission by the trial court is a mere slip and this court has deemed the conviction to have been entered accordingly. 25 Coming to the question relating to the manner in which the said sentences were to be served, section 168 (2) of the CPA is relevant. The said section is reproduced below for conveniences. 168 (2) "Where a person is convicted at one trial of two or more offences by a subordinate court, the court may, subject to the provisions of subsection (3), sentence him for those offences to the several punishments prescribed for them and which the court is competent to impose; and those punishments when consisting of imprisonment, shall commence the one after the expiration of the other in such order as the court may direct, unless the court directs that the punishments shall run concurrently." [Emphasis added] The CAT case of Shomari Mohammed Mkwama vs. Republic, Criminal Appeal No. 606 of 2021, (unreported) is also relevant for the purpose of determination of this issue. The CAT partly held as follows: - "The position of the law obtaining in this jurisdiction is that, unless there are exceptional circumstances, trial courts must order imprisonment sentences to run concurrently in case a suspect is convicted of two or more offences committed in a course of one transaction. On that point, in Ramadhani Hamisi @ Joti i4 R, Criminal Appeal No. 513 of 2016 (unreported), this Court observed that: The law is settled that the practice of the courts in this jurisdiction is that, where a person commits more than one offence at the same time and in the same series of transaction; save in very exceptional circumstances, it is proper to impose concurrent sentences." [Emphasis added] 26 From the judgment of the trial court, it is not disputed that there is no order that the sentences will run concurrently. In terms of section 168(2) of the CPA, the sentences ought to start one after the expiration of the other in such order as the court may direct. Nevertheless, there was no court order directing the same; or indication of exceptional circumstances as to why the sentences should not run concurrently. Hence, it is my finding that based on the authorities cited above, the proper order was for the sentences to run concurrently. In any case, the said irregularity has not occasioned a failure of justice and it is therefore curable under section 388 of the CPA. Accordingly, the appellant being a human being like any other, has only one life time to enjoy on the planet earth. Thus, the

sentence of thirty (30) years for the 1st count and life imprisonment for the 2nd count shall run concurrently for reasons indicated herein. In view of the foregoing, and except for the order made in respect of the manner that sentences imposed shall be served, this court is satisfied that the prosecution proved both counts against the appellant beyond reasonable doubt. Consequently, this appeal is devoid of merits and it is hereby dismissed. It is so ordered. 27 Right of appeal fully explained. DATED at DODOMA this 6th day of December, 2024. Judgment delivered in the presence of the appellant; and in the presence of Mr. Amani Japhet, learned state attorney. I.D. MUSOKWA JUDGE 28

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