IN THE COURT OF APPEAL OF TANZANIA
AT MWANZA

(CORAM: MBAROUK, J.A., MZIRAY, J.A., And KWARIKO, J.A.)

CRIMINAL APPEAL NO. 226 OF 2016

1. **LUBINZA MABULA**
2. **EMANUEL MASWALI** .....**APPELLANTS**
3. **DOTTO KACHEMBELE @ LOZA**

VERSUS

THE REPUBLIC.....**RESPONDENT**

(Appeal from the conviction and sentence of the High Court of Tanzania at Geita)

(Mlacha, J.)

Dated 31st day of March, 2016
in
Criminal Session Case No. 12 of 2014

JUDGMENT OF THE COURT

26th March & 3rd April, 2019.

MBAROUK, J.A.:

In the High Court of Tanzania at Mwanza, the appellants were charged with the offence of murder, contrary to section 196 of the Penal Code [Cap. 16. R.E. 2002]. The appellants were alleged that, on 29th day of March, 2011 at Nyasato village, Bukombe District, Geita Region murdered one Mariam Katemi. The appellants were convicted as charged and each was sentenced to suffer death by hanging. Aggrieved by the

findings and sentence of the High Court, they have preferred this appeal in this Court.

The brief facts of this case is to the effect that, on the fateful day the deceased, Mariam Katemi was eating dinner with her daughter called Pili d/o Scania (PW2). PW2 testified that they were then invaded by three culprits and the deceased was severely cut by panga on different parts of her body.

According to PW2, she said that she saw by her own eyes, and by the help of bright torch light that Masasila Salalila who she knew him before as the one who cut her mother by panga. Apart from that, PW2 testified that she also managed to see the 1st appellant standing on the door of the boy's house as a guard. On 13th day of April, 2012 the deceased was sent to Bukombe Hospital and the victim passed away. The deceased's body was duly examined and it was revealed that it had multiple cut wounds leading to excessive bleeding and consequently caused her death. The appellants were arraigned and charged with the offence of murder.

The trial court found that the prosecution case was proved beyond reasonable doubt, hence the convictions. In this Court, each of the appellant filed a separate memorandum of

appeal. The 1st appellant filed his memorandum of appeal containing four grounds of appeal thereon. The four grounds stated:-

1. *That, the Honourable trial Court erred in law and fact to convict the 1st appellant basing on unfavorable visual identification at the scene of crime.*
2. *That the trial Court erred in law and fact to convict and sentence the 1st appellant while he was brought in court outside the prescribed period, contrary to law.*
3. *That the trial court erred in law and fact to convict the 1st appellant by improperly relying upon on involuntary confessions and caution statements of co-accused whose extraction and admissibility was contrary to law.*
4. *That the trial court erred in law and fact to convict the 1st appellant while the case was not proved beyond reasonable doubt.*

In his memorandum of appeal the 2nd appellant set out the following grounds:-

1. *That the trial court erred in law in admitting and relying on Exhibits P4 and P5 in convicting the 2nd appellant.*

2. *That having decided that PW5 was incredible the Honorable trial judge erred in law and fact in relying on his evidence to convict the 2nd appellant.*
3. *That as a whole the cogent evidence on record was insufficient to support conviction against the 2nd appellant.*

In his memorandum of appeal the 3rd appellant set out the following grounds:-

1. *That the trial court erred in law and fact in admitting the Exhibit P6 the (caution statement) of the appellant which was taken beyond the allowed statutory time limits.*
2. *That, exhibit P6 (the caution statement of the 3rd appellant) was recorded contrary to the law.*
3. *That, the trial court erred in law and fact to admit exhibit P6 (cautioned statement) as evidence whereas the same was not read to the appellant and certified by him.*
4. *That, the trial court erred in law and fact by admitting exhibit P3 (the extra judicial statement) which was recorded three days after arrest of the appellant.*

5. *That, the trial court erred in law in admitting exhibit P3 the extra judicial statement of the 3rd appellant which was bad in law*
6. *That, the trial court erred in law and fact in convicting the 3rd appellant whereas the prosecution failed to prove the case beyond reasonable doubt.*

In this appeal, the 1st appellant, 2nd appellant and 3rd appellant were represented. For the 1st appellant (Lubinza Mabula) was represented by Mr. Innocent Kisigiro, learned advocate; the 2nd appellant (Emanuel Maswali) was represented by Mr. Vedastus Laurean, learned counsel and the 3rdappellant (Dotto Kachembele) was represented by Mr. Constantine Mutalemwa, learned advocate, whereas the respondent/Republic was represented by Mr. Paschal Marungu, learned Senior State Attorney assisted by Ms. Sabina Choghogwe, learned State Attorney.

Before proceeding to the merits of the appeal, the Court *suo motu* called upon the parties to address it as to whether the learned trial Judge sufficiently summed up on the vital points of law to the assessors as provided under section 298 (1) of the Criminal Procedure Act, Cap. 20 R.E 2002 (the CPA).

The counsel for the appellants jointly agreed to allow Mr. Mutalemwa, senior counsel to begin to address the Court on the issue raised by the Court *suo motu.* Mr. Mutalemwa on behalf of his other two learned collegues submitted that, the learned trial Judge did not properly sum up to the assessors by directing them to the vital points of law such as the ingredients of murder, malice aforethought and retracted confessions. He submitted that, the aim of summing -up the vital points of law to assessors, is to assist the trial court in arriving at a just decision. He also submitted that, as per the record of appeal, the learned trial judge addressed some few vital points of law in his judgment and made the decision to convict the appellants basing on those few points, but those few vital points of law were not summed up to assessors with a view to seek their opinion.

Mr. Mutalemwa further submitted that, failure to sum up to assessors properly is fatal and cannot be said that the trial was conducted with the aid of assessors. He then urged us to invoke revisional powers conferred upon us under section 4(2) of the Appellate Jurisdiction Act, Cap. 141 R.E. 2002 (the AJA) and quash the proceedings, set aside the sentence. He added

that the remedy is to order a retrial. However he said that, he will not pray for retrial as there is no sufficient evidence to ground conviction of the appellants.

Mr Mutalemwa continued to submit that, he will argue the appeal generally, and that the case against the 3rd Appellant was not proved beyond reasonable doubt. He started with the point of identification. He was of the view that, the 3rd appellant was not mentioned to have been seen at the scene of crime by the key witness of the prosecution case Pili Scania (PW2). The visual identification of the 3rd appellant was not water-tight on the ground that, she managed to identify only the 1st appellant through torch light, but failed to describe the intensity of that torch light, time spent, the distance at which she had with accused under observation.

On the point of cautioned statement and extra judicial statements, Mr. Mutalemwa submitted that, the 3rd appellant's cautioned statement was improperly received as the evidence was wrongly relied upon, because it was recorded outside the time prescribed by the law. He stated that the 3rdappellant was arrested on 10/08/2012 and her cautioned statement was recorded on 13/08/2012. As seen also in Exhibit P6, the

cautioned statement of the 3rd appellant the same was recorded after four hours had elapsed. He argued that, in the circumstance, it was recorded in contravention of section 50(1) (a) of the CPA. He pressed the Court to expunge it from the record. He referred us to the case of **Mpemba Mashenene versus Republic,** Criminal Appeal No. 557 of 2015 (unreported).

Mr. Mutalemwa continued by submitting on the issue of an extra judicial statement (Exh. P3) which shows that it was not signed by the 3rd appellant to acknowledge that she was informed of her rights, and that she was willing to give a statement. Further, he added, that the statement was not read to her. Basing on the fact that, there is no evidence which proves that the 3rd appellant was at the scene of crime together with the irregularities in the cautioned and extra judicial statements, Mr. Mutalemwa urged the Court to desist from ordering a retrial but make a decision of releasing the 3rd appellant from jail.

On his part, Mr. Kisigiro who represented the 1st appellant submitted that, he joined hands with the submissions made by

Mr. Mutalemwa on the point that the trial Judge failed to direct the assessors on the vital points of law.

On the point of identification, Mr. Kisigiro submitted that, the 1st appellant was not properly identified by PW2 as the environment was not condusive for correct visual identification as the area was full of clouds, the torch which PW2 said enabled her to identify the 1st appellant was not explained into detail as to its size whether small or big. Also the intensity was not clearly stated and how long she managed to observe the 1st appellant. To support his arguments Mr. Kisagiro referred us to the case of **Philimon Jumanne Agala versus Republic,** Criminal Appeal No 187 of 2015 (unreported). Mr. Kisigiro maintained his stand that, the conditions were unfavourable for a proper and unmistaken identification of the 1st appellant. He therefore urged us to find that the 1st appellant was not properly identified.

On the point of the cautioned statement and extra judicial statement, he point out that, the 1st appellant had never recorded cautioned statement neither extra judicial, but the Court relied upon the statements made by his co-accused and the same contained some irregularities as pointed out by Mr.

Mutalemwa, hence they have to be expunged and the remaining evidence would not be sufficient to sustain the conviction of the 1st appellant. He then cited the case of **Daniel Petro versus the Republic,** Criminal Appeal No 522 of 2015 (unreported) to support his argument. He concluded that, the case against the 1st appellant was not proved beyond reasonable doubt and therefore prayed the conviction against the 1st appellant to be quashed and sentence be set aside and 1st appellant to be set free.

On his part, Mr. Laurean who represented the 2nd appellant also joined hands with his fellow advocates that the assessors were not directed to the vital points of law in the summing up. He therefore urged us just like his fellow advocates that we should invoke our revision powers conferred upon us under section 4(2) of the AJA and order retrial. He said that, the remedy of the pointed out irregularities is to order retrial but he will not pray for retrial as there is no sufficient evidence to ground the conviction of the 2nd appellant.

On the point of the cautioned statement, Mr. Laurean submitted that, the said cautioned statement of the 2nd appellant (Exh. P.5) violated section 50(1) (a) of the CPA as it

was recorded out of four hours. The record of appeal shows that, the 2nd appellant was arrested on 1st day of August, 2012 while his cautioned statement was recorded on 13th day of August, 2012. He argued that in order for the confession of the 2nd appellant to be taken as a basis for his conviction, it was necessary for the prosecution to establish without any shadow of doubt that the same was made voluntarily and within four hours as prescribed by the law. He pointed out that, section 50(1) (a) of the CPA provides for the period available for interviewing a person which is four hours commencing at the time when he was taken under restraint and where the recording cannot be completed within four hours, the law allows extension of time under certain circumstance as provided under section 51 of the CPA. In support of his argument he cited to us the case of **Janta Joseph Komba & 3 Others versus Republic,** Criminal Appeal No 95 of 2006 (unreported).

Mr. Laurean argued that the circumstances under which the extra judicial statement was taken were such that it could not be said that the 2nd appellant was a free agent when he made the statement. He then prayed for the Court to abstain

from ordering a retrial instead make a decision of releasing the 2nd appellant from custody.

On his part, learned Senior State Attorney for the respondent opposed the appeal but however agreed with the point that the assessors were not properly directed to the vital points during summing up, hence the whole trial is nullity. As to the way forward, Mr. Marungu, prayed to the Court to invoke section 4(2) of the AJA and nullify the proceedings and judgment, quash the conviction, set aside the sentence against the appellants and order a retrial as there is sufficient evidence to sustain the convictions of the appellants.

On the point of identification, Mr. Marungu submitted that, the 1st appellant was sufficiently identified at the scene of crime by PW2 who knew him before the day of the incident as a husband of her aunt. PW2 also used the torch which had bright light to identify him. Mr. Marungu further said the distance between them was one meter only and PW2 described the attire which was put on by the 1stappellant on that fateful day that he was dressed in a white coat. He further said that, the 1st appellant was arrested at the scene of crime after being immediately named by PW2 to the authorities. To support his

submission, Mr. Marungu cited the case of **Nathaniel Alphonce Mapunda** [2006] TLR 395 at 403 and **Keneth Ivan versus Republic,** Criminal Appeal No 178 of 2007 (unreported).

On the issue of common intention, Mr. Marungu submitted that, the 1st appellant failed to protect the deceased instead he cooperated with those who killed her by standing outside as a guard. He therefore submitted that, the 1st appellant was properly identified by PW2.

As for the 2nd appellant, Mr. Marungu submitted that, his cautioned and extra-judicial statements were properly made and were not objected during the tendering. Therefore, he said the provisions of section 50 (1) (a) of the CPA were not contravened. He cited the case of **Nyerere Nyague versus Republic,** Criminal Appeal No. 67 of 2010, (unreported).

As for the 3rd appellant, Mr. Marungu submitted that, the cautioned and extra judicial statements were not objected during the tendering, which means that, their existence cannot be opposed at this stage. He added that, doing so at the appellate level is a mere afterthought. In support his argument, he referred us to the case of **Msafiri Jumanne and 2 Others**

versus Republic, Criminal Appeal No. 187 of 2006, (unreported).

Mr. Marungu submitted further that, the issue of contravention of section 50(1) (a) of CPA cannot arise now, because there were no objections made by the defence during trial, and the 1st appellant was well identified and cautioned statements and extra judicial statements were properly tendered, hence this is a proper case for the Court to order for a retrial.

Mr. Mutalemwa in his rejoinder continued to insist that, there is no enough evidence against the 3rd appellant and pointed out that Mr. Marungu misconstrued the decision of **Nyerere Nyague versus Republic,** (*supra*), that they were not talking about admissibility of evidence but about the evidential value at the appellate level and that the issue which was challenged was on evidential value not admissibility. As to whether the law was complied with or not in relation to the time of recording cautioned statements, he submitted that, this Court has the right to correct the mistakes made by the High Court. On this point, he cited section 4(2) of AJA. He therefore

urged the Court not to order retrial against the 3rd appellant as there is no cogent evident to sustain conviction.

Mr. Kisigiro in his rejoinder, maintained his status that the 1st appellant was not identified at the scene of crime as PW2 was cut by panga and she had no sufficient time to identify the 1st appellant. He added that, PW7 stated that he went to arrest one Masasila and not the 1st appellant. The exhibits P5 and P6 were written by two people but were not signed by the 2nd and 3rd appellants. Mr. Kisigiro added that, having expunged these exhibits, there is no further evidence to be relied upon to sustain the 1st appellant's conviction. He therefore prayed for the appellants to be set free.

Mr. Laurean had nothing to add in his rejoinder.

We have given due consideration to the submissions made by counsel of both sides. We are alive to the mandatory legal requirement that all trials before the High court must be with the aid of assessors, see section 265 of the CPA. In respect of the summing up, the provisions of section 298(1) of the CPA requires the trial judge upon conclusion of evidence made by both sides, sum up the evidence and then invite the assessors to give their respective opinions. That section states:

"298.-(1) When the case on both sides is closed, the judge may sum up the evidence for the prosecution and the defence and shall then require each of the assessors to state his opinion orally as to the case generally and as to any specific question of fact addressed to him by the judge, and record the opinion."

In the case of **Abdallah Bazaniye and others versus Republic**, [1990] TLR 42, this Court observed that:-

"...We think that the assessor's full involvement as explained above is an essential part of the process that its omission is fatal, and renders the trial a nullity.""

It is evident that, the trial judge is duty bound to adequately direct the assessors to all vital points of law disclosed in the case upon which the decision will be based on, so as to enable assessors to give meaningful opinions. See the cases of **Masolwa Salum versus Republic**. Criminal Appeal No. 206 of 2014, **Said Mshangama @ Senga versus Republic**, Criminal Appeal No. 8 of 2014, **Fadhili Juma and**

another versus Republic, Criminal Appeal No 567 of 2015 (all unreported).

All those authorities have emphasized the importance of summing up to assessors. We, indeed, consider the summing up done to assessors and the judgment of the trial judge, entirely agree with the learned counsel of both sides that the assessors were not properly and sufficiently directed by the trial judge on vital points of law although the trial judge convicted the appellants basing on those points. What the trial judge did at the time of summing up to assessors, as seen at pages 60 – 73 of the record, was to summarize evidence from both sides and later summed up to them on the visual identification, independent evidence for corroboration, and whether the case was proved beyond reasonable doubt. Having so done, the trial judge called upon the assessors to give their opinions.

The record of appeal shows that, the learned trial judge convicted the appellants with the offence of murder but the record is silent in the summing to assessors as to whether the trial judge explained to the assessors the ingredients of the offence of murder and as to how malice aforethought is

proved. Another vital points which the trial judge used for the conviction of the appellants were caution statements and extra judicial statements but assessors were not informed of these statements. Also the issue of the evidence of accomplice and principal offenders, conduct of the accused and common intention, all these vital points were not explained to the assessors in the summing up.

In yet another case of **Tulubuzwa Bituro versus Republic** [1982] TLR 264, the Court categorically stated that:

> *"... in a criminal trial in the High Court where assessors are misdirected on a vital point, such trial cannot be construed to be a trial with the aid of assessors. The position would be the same where there is non-direction to the assessors on a vital point..."*

Given the deficiencies in the summing up to the assessors which featured in the present case and the import of the relevant law and the Court decisions, we are satisfied that the trial cannot be said to have been conducted with the aid of assessors and the infraction vitiated the trial. See the cases of

Republic versus Revelian Naftali and Another, Criminal Appeal No. 570 of 2017, (unreported).

Under normal circumstance, having agreed that the assessors were not summed up on the vital points of law and as per the cited authorities above, we ought to have ordered a retrial. However, it has been necessary for us to consider other surrounding factors in the case and each case should be decided on its own circumstance.

This brings us to the crucial aspect of visual identification, we wish to state that the law is settled in this jurisdiction that evidence of visual identification is of the weakest kind and most unreliable. As such, this type of evidence should only be relied upon to convict an accused person when all possibilities of mistaken identity are eliminated and when the court is satisfied that the evidence before it is absolutely watertight. This observation was made by the Court in the case of **Waziri Amani versus Republic** [1980] TLR 250 at p. 252.

It was emphasized in that case that before relying on such evidence, the trial courts should put into consideration the time the witness had the accused under observation, the

distance at which the witness had the accused under observation, if there was any light, then the source and intensity of such light, and also whether the witness knew the accused before. See also the cases of **Matola Kajuni & 2 Others versus Republic,** Consolidated Criminal Appeals No. 145, 146 and 147 of 2011, CAT (unreported) and **Raymond Francis versus Republic, [1994] T.L.R. 100.**

It is also important to emphasize that in weighing such evidence, the court has to remain focused as whether or not the conditions at the scene of crime were favourable for correct identification. See **Raymond Francis versus Republic** (*supra*).

At this juncture, we wish to point out that the conviction in this case and specifically for the 1st appellant depended much on the evidence of visual identification by PW2. After having dispassionately examined the submissions made by all counsel, on our part, we join hands with Mr. Kisigiro that the evidence adduced by the prosecution witnesses was not enough to establish the guilt of the 1st appellant. We are of the view, that, the decision of the trial court in this case was mainly centered

on the issue of identification of the 1st appellant at the scene of crime.

However, it is now settled that if the witness is relying on some source of light as an aid to visual identification, he/she must clearly describe the source and intensity of that light. There is a string of the decisions of this Court which emphasizes that position. For instance, see **Richard Mawano and Another versus Republic,** Criminal Appeal No 366 of 2014, **Issa Mgara @ Shuka versus Republic** Criminal Appeal No. 37 of 2005, **Omar Iddi Mbezi and Three Others versus Republic** Criminal Appeal No. 227 of 2007 (all unreported).

In the instant case at hand, it is not in dispute that the charged incident occurred at night in the darkness. For example, PW2 simply testified that she identified the 1st appellant by the aid of the torch light. It is clear that PW2 did not explain on the intensity of the torch light which assisted her visual identification of the 1st appellant. The issue of the description of the intensity of the source of light has been emphasized in our various decisions that it should be clearly stated so as to avoid mistaken identity of a suspect. Apart from

that the record also shows that PW2 testified to the effect that she was cut at her head, on her back, waist and was bleeding profusely at the scene of crime. We are doubtful that under such horrific conditions whether PW2 could have correctly identified the 1st appellant at the scene.

On that basis therefore, we are of the view that identification was not that much watertight to sustain a conviction of the 1st appellant as pointed out by Mr. Kisigiro that, PW2 has failed to have correctly identified the 1st appellant at the scene of crime. The 1st appellant should therefore be given the benefit of doubt.

Turning to the 2nd and 3rd appellants, we agreed with the submissions made by the advocates for the 2nd and 3rdappellants that, they were completely not mentioned by PW2 to have been present at the scene of crime. In the circumstances, as the 2nd and 3rd appellants were completely not mentioned to have been seen at the scene of crime, we hold therefore that we can no longer sustain the 2nd and 3rdappellants' convictions relying on identification. See the case of **Julius Mathias and Kwilasa Mathias versus Republic,** Criminal Appeal No 546 of 2015, and **Frank Christopher @**

Mallya versus Republic, Criminal Appeal No. 182 of 2017 (all unreported).

We now come to discuss the cautioned statements of the 2nd and 3rdappellants. As was explained above by their advocates, we agreed that the said cautioned statements under consideration were improperly admitted and used as evidence because they were taken in contravention of section 50 (1) (a) of the CPA. This means, the statements were recorded outside the four hours contemplated under section 50 (1) (a) of the CPA. That section provides that:-

> *"(1) For the purpose of this Act, the period available for interviewing a person who is in restrain in respect of an offence is*
>
> > *"(a) subject to paragraph (b), the basic period available for interviewing the person, that is to say, the period of four hours commencing at the time when he was taken under restraint in respect of the offence."*

We have noted that, though under section 51(1)(a) of the CPA for extension of time within which to record the accused's statement after four hours have elapsed, the recording officer did not take that advantage. As we are aware, it is now settle law that non-compliance with the provisions of section 50(1)(a) of the CPA is a fundamental irregularity that goes to the root of the matter and renders the illegality obtained evidence inadmissible and one that cannot be acted upon by the Court. See the case of **Mkwavi s/o Njeti versus Republic,** Criminal Appeal No 301 of 2015 and **Said Bakari versus Republic,** Criminal Appeal No 422 of 2013 (all unreported).

As the Court said in **Mkwavi s/o Njeti versus Republic** (*supra*), the effects of non-compliance with these provisions is to render such documents bad evidence liable to be expunged from the record. Thus, we find that the cautioned statements of the 2nd and 3rd appellants is bad evidence, we accordingly expunge them from the record.

Next for discussion is the complaint that the extra judicial statement of the 2nd and 3rd appellants were faulty for the following reasons; one that, it was taken in the presence of the policeman, two that, they did not sign after they were

purportedly informed of their rights to signify that they consented or otherwise.

We have closely examined exhibits P5 and P6 (the extra judicial statements) under discussion. In paragraphs 3 of those exhibits, it is reflected that the 2nd and 3rd appellants were placed under the guard of a police officer. That in our view, implied that they were not free agents as submitted by their learned advocates. Likewise, it is not indicated in those exhibits of 2nd and 3rd appellants consented to offering a statement before the justice of peace. This is on the ground that they did not sign anywhere to reveal their consent. In our view, these omissions were fundamental and rendered those statements inadmissible as evidence in the case, because it was taken in breach of the Chief Justice's Instructions to the Justices of the Peace published in 1964. See the case of **Hatibu Gandhi & Others versus Republic,** [1996] T.L.R 12.

In view of what we have attempted to state above, the extra judicial statements of 2nd and 3rdappellants are too bad in evidence liable to be expunged from the record, as we hereby do.

Having established that the trial judge has failed to direct the assessors on the vital points of law in the summing up, the remedy will be to order a retrial under section 4(2) of the AJA but in the interests of justice, it has been necessary for us to consider other surrounding factors in this case and especially if there is cogent evidence to sustain the appellants conviction. As we have pointed out above that, PW2 failed to identify the 1st appellant on the scene of crime, PW2 did not state the intensity of light which was allegedly sourced from the torch. In the circumstances, we are seriously doubtful that such condition at the scene of crime was conducive for correct identification as the PW2 was invaded by three bandits. We hold therefore that the evidence of visual identification was weak and incapable of sustaining the 1st appellant convictions

In respect of the 2nd and 3rd appellants, the prosecution case depended solely on the evidence of cautioned and extra judicial statements. We have already found out that these exhibits constituted irregular evidence which resulted from the way they were recorded, and we have expunged them.

In the circumstance, we accede to the prayer made by the appellants' advocates that it will be in the interest of justice

in this appeal if we desist from ordering retrial against the appellants instead release them from jail.

For that reason, we hereby quash the proceedings, judgment and convictions and set aside the sentence of death by hanging which was imposed on the appellants. Instead, we order immediate release of the appellants from prison unless they are being held for some other lawful cause.

It is so ordered.

DATED at **MWANZA** this 2nd day of April, 2019.

M. S. MBAROUK
JUSTICE OF APPEAL

R. E. S. MZIRAY
JUSTICE OF APPEAL

M. A. KWARIKO
JUSTICE OF APPEAL

I certify that this is a true copy of the original.

B. A. MPEPO
DEPUTY REGISTRAR
COURT OF APPEAL