IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MOSHI DISTRICT REGISTRY

AT MOSHI

CRIMINAL APPEAL NO. 51 OF 2023

(Originating from Moshi District Court in Criminal Case No. 435 of 2021)

JAPHET IBRAHIM MATARRA ..... APPELLANT

VERSUS

REPUBLIC ..... RESPONDENT

JUDGMENT

13/12/2023 & 22/01/2024

SIMFUKWE, J.

Japhet Ibrahim Matarra, hereinafter referred to as the Appellant was charged before the District Court of Moshi at Moshi with the offence of Publication of false information contrary to **section 16 of the Cybercrimes Act, 2015.**

The particulars of the offence were to the effect that in October, 2021, within the District of Moshi in Kilimanjaro Region, the appellant did publish data presented in a text in a computer system through his twitter account bearing words ***"Utajiri wa aliyekuwa Rais wa JMT awamu ya tano,***

marehemu DKT. JOHN POMBE MAGUFULI, unakadiriwa kuwa Tshs. 11.2B. Upande wa wastaafu inakadiriwa kama ifuatavyo: JAKAYA KIKWETE (352B), marehemu B.W. MKAPA (461B) na ALLY HASSAN MWINYI (18.4B) na Rais wetu SAMIA SULUHU (34.5B)" while knowing that such data was false with intent to mislead the public.

In a nut shell, the prosecution case was that, through the informer, a Police Officer namely SSP Boniface Mayara (PW5), got information about a message sent on twitter account concerning wealth of the current and retired Presidents of the United Republic of Tanzania. The informer named the person who sent the message to be Japhet Matarra. The message mentioned the 5th President the late John Pombe Magufuli, the 4th President Jakaya Mrisho Kikwete, the 3rd President Benjamin William Mkapa, the 2nd President Ally Hassan Mwinyi and the 6th President Her Excellence Dr. Samia Hassan Suluhu.

Upon receiving such information, PW5 went to satisfy himself on the presence of the message and legality of the sender. He found that the message had been sent by a normal civilian. Thereafter, PW5 ordered PW4

G.2392 D/CPL Izaack and other policer officers to trace and arrest the sender of the massage. On 28/10/2021, PW4 and other police officers traced and managed to arrest the appellant and seized from him two mobile phones, the property of the appellant. It was alleged that at the police station the appellant was interrogated and he confessed to have posted such a massage which mislead the public about the wealth of the current President and retired Presidents of Tanzania. His cautioned statement in that respect was admitted as exhibit. (Exhibit P9).

In his defense the appellant denied to be the owner of the said twitter account. He further admitted the names used to be his names but he denied to had written and posted the alleged message.

In his reasoned judgment, the trial magistrate found that, the posted message was false and was intended to mislead the public on the wealth of the current and retired Presidents of Tanzania. As such, he entered conviction against the appellant as charged and sentenced him to pay a fine of Tshs. Seven Million (7,000,000/=) of serve five years imprisonment in default.

Aggrieved with the decision of the trial court, the appellant approached this court on eight grounds of appeal as follows:

1. ***That,*** *the learned trial Magistrate erred in law and fact by convicting and sentencing the appellant basing on expert evidence and forensic report which are un-reliable, consequently arriving to an erroneous decision.*

2. ***That,*** *the learned trial Magistrate erred in law and fact by convicting and sentencing the appellant basing on caution statement which was taken beyond prescribed time limit provided by the law hence arriving to an erroneous decision. The appellant was also seriously tortured for almost four days and was interrogated by three different police officers and lastly was taken to Magistrate as a justice of peace and therefore four different statements was (sic) taken, however only one statement was tendered in court which was repudiated by the accused/appellant herein.*

3. ***That****, the learned trial Magistrate erred in law and fact by convicting and sentencing the appellant basing on caution statement which was*

not known to the appellant and not his wordings (sic) hence arriving to an erroneous decision.

4. ***That,*** *the learned trial Magistrate erred in law and fact by convicting and sentencing the appellant while the prosecution did not prove the allegedly offense to the standard required by the law in proving criminal cases, as there is no among the alleged person or their representative came to testify in court to deny the statements allegedly to have been published by the appellant herein. Moreover, the prosecution had never proved the effect of the statement to the public allegedly to have been published, rather mere speculations that might cause nuisance to the public, this is more tort than crime. (sic)*

5. ***That,*** *the learned trial Magistrate erred in law and fact by convicting and sentencing the appellant basing on the un-broken chain of custody of the exhibits, including accused's/appellant cellphone.*

6. ***That,*** *the learned trial Magistrate erred in law and fact for failure to scrutinize and evaluate the evidence adduced during trial hence arriving to an erroneous decision.*

7. ***That,*** *the learned trial Magistrate erred in law and fact for failure to consider and neglecting the strong evidence adduced by the appellant which contradicted with the evidence adduced by the prosecution witnesses hence arriving to an erroneous decision.*

8. ***That,*** *the learned trial Magistrate erred in law and in fact in issuing a sentence that is inconsistence with the alleged offence and did not consider any mitigating factors by the accused/appellant.*

The appellant prayed that, this appeal be allowed, and this court be pleased to quash the said judgment, conviction and set aside the sentence imposed by the trial court and set the appellant at liberty.

The appeal was disposed by way of written submissions. Mr. Ally Mhyellah the learned advocate appeared for the appellant while the Respondent, Republic had the service of Mr. John Mgave, the learned State Attorney who resisted the appeal.

On the outset Mr. Mhyellah contended that the trial magistrate erred in law an in fact by convicting the appellant basing on expert opinion alone. He admitted that an expert opinion is relevant and admissible before the court as per **section 47 of the Evidence Act (Cap 6 R.E 2022)**. However, he

argued that the court should not be bound by expert opinion alone to conclude the criminal matter. The learned counsel continued to aver that, the appellant's phones were seized and taken to an expert for forensic laboratory investigation and the report was admitted in court but it was not enough to convict the appellant because the machine which was used to generate the document was never brought before the court. PW5 who alleged to had seen the message on twitter never showed that twitter account before the court on his phone neither on the seized phones which were never opened before the trial court. To cement his argument the learned counsel for the appellant made reference to the case of **YUSUPH AND TWO OTHERS v REPUBLIC**, Criminal Session No. 92/2022 High Court at Mtwara.

The learned counsel continued to argue that, the report extract exhibit P8 is completely electronic evidence and **section 64A of the Evidence Act Cap 6** and **section 18(2) and (3)** (sic) require special procedure to be adhered to, before electronic evidence is admitted.

On the 2nd ground the learned counsel for the appellant contended that the trial court admitted and considered the caution statement which was taken

out of the statutory time that is four hours after a person has been arrested as provided by the law. That, the appellant's caution statement was taken four days after the arrest which makes such statement ineffective. He insisted that, the court should have rejected the caution statement which contravenes **Section 51 (1) of Criminal Procedure Act (Cap 20 R.E 2022)** even in absence of an objection raised by the parties. He cited the case of **Mohamed Juma Mpakama v. The Republic**, Criminal Appeal No. 385 of 2017.

On the third ground of appeal, Mr. Mhyellah submitted that the trial court erred in law by making decision based on caution statement which was not known by the appellant who testified that he was interrogated by almost three police officers and justice of peace. That, PW5 admitted to be the first person who interrogated the appellant but denied to record his statement while the appellant insisted the he signed the statement taken by the R.C.O. The learned counsel complained that the trial magistrate never evaluated that statement instead he jumped into conclusion that the statement which was repudiated by the accused person proved the allegation. The learned counsel insisted that it was erroneous to convict the accused person basing on the caution statement which was repudiated by

the appellant. He concluded that the prosecution case was not proved to the required standard.

On the 4th ground of appeal, the learned counsel for the appellant submitted that the burden of proof lies on the person who alleges and they must lead credible and cogent evidence to support the claim as provided under **section 110 (1) and (2) of the Evidence Act** (supra). That, the prosecution had not proved their allegation beyond reasonable doubt. He continued to state that the offence was about the wealth of Presidents of the United Republic of Tanzania. Their names and wealth were disclosed, but the prosecution failed to testify the real wealth of the victims and neither of them came to deny except the police who freed their posts and suspected it to be an offence. Mr. Mhyellah believed that the alleged statement is not a crime rather a tort and the prosecution did not prove the effect of the statement to the public.

It was stated further that, the Republic accuses the appellant that he published fake news against the current and retired Presidents of Tanzania in relation to their net wealth via Twitter using his personal account but neither of them went to the police station to raise the complaint. No victim

or his/her representative came to court to testify a real wealth he/she own. It was Mr. Mhyellah's opinion that the information cannot be a crime because the prosecution failed to disprove the allegation hence, they failed to prove beyond reasonable doubt that the information was false and that the same mislead the public. The counsel for the appellant buttressed his argument by referring the case of **JONAS NKIZE vs REPUBLIC [1992] TLR 213**

Turning to the 5th ground of appeal, the learned counsel for the appellant strongly disputed the chain of custody of prosecution exhibits which were unlawfully obtained. Hence, difficult to be believed if they were genuine or fabricated one. He gave an example that during the trial PW3 was asked to open the exhibit in front of the court but he refused. His refusal showed that the exhibit was not authentic.

On the 6th ground of appeal, the learned Advocate for the appellant lamented that the trial court failed to evaluate evidence of both sides which led into erroneous decision. He cemented his point with the case of **SILAS SINDAIYEBUYE MSAGABAGO vs DPP,** Criminal Appeal No. 184 of 2017.

On the 7th ground of appeal, Mr. Mhyellah contended that the trial court found the appellant guilty without taking into consideration his strong testimony which was very clear to the facts and to the law. The learned counsel quoted the case of **STANSLAUS RUGABA KASUSURE AND THE ATTORNEY GENERAL vs PHARES KABUYE [1982] TLR 33 CA** in which the importance of motive in criminal cases was discussed. He averred that the appellant stated clearly that he was not a politician nor activist or journalist and had no reason to cause any political conflict. The appellant denied to be a member of Chadema or human right activist and finally denied to own the alleged twitter account. That the account shows that it was open at Manyara while the appellant had never lived in Manyara.

On the 8th ground of appeal, the learned counsel argued that the trial court judgment contains a lot of inconsistences. He cited the case of **MASISA MAGASHA v R [1999] TLR 292**. He went on to establish those inconsistences by stating that PW1 said that the news was published on 28th October 2022 at 09:42hrs but PW3 stated that the tweet was published or posted on 17th October, 2022 at 09:00hrs which is in accordance with the machine used in forensic testing. Another

contradiction which the counsel drew attention of this court was that PW4 alleged to have recorded the appellant's cautioned statement and reduced time in his testimony compared to the testimony given by PW1. During his testimony he said that immediately after the accused was taken into custody, he was taken to the RCO.

Mr. Mgave the learned State Attorney for the respondent Republic in reply to the 1st ground of appeal, he submitted that the charge was proved beyond reasonable doubts and the prosecution during the trial was required to prove that there was publication of false information. The information must be false but also the information published must be intended to mislead the public and the publisher must be known and the same was done by the prosecution.

Considering the fact that the information was against public figures of the highest rank in the nation, it was the opinion of the prosecution that the public will be wrongly informed of the fact published by the appellant who is in his caution statement told the police that the information was not true. Hence, damaging the image of the retired Presidents and the current President of the United Republic of Tanzania.

The counsel for the Respondent elaborated that, the prosecution is required to prove the case beyond reasonable doubts but in the same manner he who alleges must prove. When the issue was tabled before the appellant to prove the published information, he was not in the position to do so as he agreed the same not to be true. Hence, he was in support of the prosecution who accused him of publication of false information. The prosecution managed to prove first, publication of the false information on twitter account owned by the appellant where through his seized cell phone Samsung A2 as per the evidence of PW3 a Cybercrime investigator who after receiving the phones as exhibits was required to investigate and come up with a report. He testified that the phones he received were Tecno R7 and Samsung A2 and after investigation was completed, it was Samsung A2 that was found with the false information published in the twitter account. The owner of the account was the appellant whereas in that account there was a photo of the appellant. It was revealed further that the account contained names of four Presidents of the United Republic of Tanzania as quoted at page 11 of the judgment.

Mr. Mgave stated further that evidence of PW3 and PW4 among other witnesses sufficed to prove the case against the appellant. It was PW4's

evidence at page 38 of trial court proceedings that after cautioning the appellant, he confessed to have published the statement. After objection raised on the voluntariness of the statement it was the court's view that the same was properly recorded hence, the evidence was valid, credible and established. He referred the case of **JUMANNE ISSA & ANOTHER V. REPUBLIC** (Consolidated Criminal Appeal No. 54 of 2021, TZCA at page 9 (Tanzlii). The learned counsel continued to aver that the cautioned statement that shows how the accused confessed is the very useful evidence against the appellant who stated expressly as observed at page 22 of the judgment. Hence, the prosecution managed to prove that the appellant was the one who published the said false information.

It was stated further that, the prosecution made sure that the items seized from the appellant were chained properly as PW4 completed seizure certificate and the appellant signed as a clear indication that the properties belonged to the appellant as he did not dispute the item being seized from him. The items were later handed over to the exhibit keeper through handing over certificate, who latter handed them to PW1 who took them to the forensic investigator PW3. The handing over certificates were tendered by PW2, the same were admitted and marked as Exhibit P1 and Exhibit P2

respectively. The items were marked as exhibit P4 and P5. That, from seizure to the last stage, the chain was seen to be maintained as rightly observed by the trial magistrate at page 19 of the judgment. Thus, there was no element of tempering with the exhibit which was handed to PW3 and later confirmed through the report that the item contained the alleged false information as charged. Therefore, the prosecution managed to prove the case beyond reasonable doubt against the appellant

Regarding the second ground of appeal the learned State Attorney strongly opposed the lamentation from the appellant's counsel that the trial court did not error in subjecting the entire evidence on record to an objective scrutiny and stating that the defense evidence acted as corroborative evidence on part of the prosecution. The trial Magistrate reached this conclusion that the defense evidence was corroborating the prosecution as he found that the appellant gave information exactly as that which appears in the twitter account. The published false information such as the photo found in exhibit P8 and exhibit P7 (the report) was not denied or objected by the appellant during cross examination. Further, the appellant never denied in his examination in chief about the photo found in exhibit P8 being his photo, but again the report exhibit P7 ruled out that the personal

particulars were of the appellant. Such names appeared in exhibit P8 hence his evidence was at this stage supporting the prosecution to prove ownership of the twitter account. Also, the content of the particulars of the said twitter account was found to be of the appellant as rightly observed by the trial Magistrate at page 15 to 19 of the Judgment. To support his argument, the counsel for the respondent referred this court to the case of **NYAKWAMA S/O ONDARE @ OKWARE VS REPUBLIC** (Criminal Appeal No. 507 of 2019 [2021] TZCA 592 [Tanzlii] at page 19

Stressing further the guiding principle the counsel for the respondent insisted that evidence of the appellant was useful in building the case against him. He then quoted the case of **MOHAMED HARUNA @ MTUPENI & ANOTHER V. REPUBLIC** (Criminal Appeal No. 259 of 2007 (2010) TZCA (Tanzlii) at page 7.

Responding to the 3rd ground of appeal, the counsel for the respondent stated that the trial Magistrate did not error using prosecution evidence as a basis of the appellant's conviction since the said evidence was not contradictory and the same was reliable. It was the appellant's submission that the prosecution evidence was not corroborated. Mr. Mgave noted that,

that issue had been answered in the second ground of appeal that the prosecution evidence was corroborated by the evidence of the appellant as he gave out details which the prosecution was fighting to prove. Evidence against the appellant was given by PW5 who was informed that there was publication of false information on twitter and he confirmed to have seen the said publication and that it related to the appellant. PW4 arrested the appellant and seized his cell phones which included Samsung A2 which after investigation was found to contain the message published and details of the appellant. It was further noted that the appellant's cautioned statement which was admitted in court, after inquiry it acted as corroborative evidence against him as it was accepted as per page 51 of the typed court proceeding and the content proved commission of the offence as seen at page 22 of the judgment. Evidence of PW3 who is an expert, his evidence was received in court and his report exhibit P7 was found by the trial court to be credible and reliable. The same formed bases of conviction of the appellant as the court did not see the reason why the same should not be received in court. Hence, his conviction was rightly formed after the finding that there was enough evidence to convict him.

Mr. Mgave prayed this court to find the 3rd ground to have no merit and proceed to dismiss it.

Arguing the 4th ground of appeal, Mr. Mgave submitted that the cautioned statement made by the appellant was properly procured and there was no illegality in its making. That, the records were very clear as per page 51 of the proceedings where the ruling of the trial court shows that it was undisputed fact that the accused made a statement to PW1 but disputed that the same was not recorded. That, the names and signature in the cautioned statement was not disputed to be of the appellant by the appellant. That a mere denial by the appellant that he was interrogated without his statement being recorded, the trial court formed an opinion that it was an afterthought. It is also the trial court's observation that the signature seen in the certificate of seizure was exactly like that in the cautioned statement of the accused person. Since the signature in the seizure certificate was not opposed by the appellant when it was tendered, it was hard for the court to believe that such signature appearing in the cautioned statement was not of the appellant. Therefore, the court drew adverse inference that the accused's denial was just an afterthought hence, proceeded to accept the cautioned statement as per page 22 of the

judgment. To cement his argument the learned counsel referred the case of **YUSUPH NDATURU YEGERA @ MBUNGE HITLER V REPUBLIC** (Criminal Appeal No. 195 of 2017) [2021] [Tanzlii] at page 22.

The learned counsel continued to state that, the appellant was not convicted just because the cautioned statement was accepted in court, but as part of the evidence and the same was used as corroboration to other reliable and credible evidence of PW3, the forensic investigator who tendered the report, evidence of PW4 the arresting officer and the supportive defense evidence of the appellant was noted by the court and the same was used to convict him. The position is very clear that a court may act on a repudiated or retracted confession to convict the accused person but as a rule of practice, it should be corroborated. A court may however act on an uncorroborated retracted or repudiated evidence to convict an accused person if after having warned itself, it is satisfied that the confession was nothing but the truth. The counsel for the respondent referred to page 24 of the case of **YUSUPH NDATARU YEGERA** (supra) where the trial court found out that there was enough evidence to convict the appellant even if the caution statement would have been the basis of

the conviction alone, still there was another credible evidence that corroborated that evidence.

That was the end of both parties' submissions.

I have examined the parties' submissions and the rival issues. The main issue for determination is whether the prosecution case before the trial court was proved at the required standard.

I wish to start with the 2nd and 3rd grounds of appeal where Mr. Mhyellah contended that the caution statement was taken beyond the prescribed time and that the same was not known to the appellant. Disproving the allegation Mr. Mgave for the respondent submitted that the prosecution evidence was corroborated by the evidence of the appellant as the appellant gave the information which exactly appeared in the twitter account alleged to have published false information. That, the same was not denied or objected by the appellant during cross examination. When the cautioned statement was objected before the trial court, the appellant informed the trial court that he was interrogated by PW1 but his statement was not recorded nor read to him. He alleged that; his statement was recorded by another police officer not PW1. In its ruling the trial court

found that, the fact that the accused agreed to have made a statement to PW1 corroborates prosecution evidence that the accused made a statement to PW1. It may be noted that, before this court the appellant has changed his complaint to be that the said statement was recorded beyond the prescribed time. With respect to the learned counsel for the appellant, I concur with the learned trial court magistrate that the repudiation of the appellant is just an afterthought and forum shopping.

Another allegation by the appellant was that it was wrong for the prosecution side not to call the Presidents of the United Republic of Tanzania while they were alleged to be victims of the false publication. It is my considered opinion that the victims of the alleged publication are current and retired Presidents of the United Republic of Tanzania. Therefore, it is the institution which have been affected, not the Presidents in their personal capacity. Hence, any person from the public service responsible for that issue, like Police Officers were the right persons to testify for the Republic during the trial.

On the 4th ground of appeal, it was alleged by the appellant that the case at the trial court was not proved beyond all reasonable doubts. The

appellant was charged for committing the offence under the provision of **section 16 of the Cybercrimes Act No. 14 of 2015** which provides:

> *"Any person who publishes information or data presented in a picture, text, symbol or any other form in a computer system knowing that such information or data is false, deceptive, misleading or inaccurate, and with the intent to defame, threaten, abuse, insult or otherwise deceive or mislead the public or councelling commission of an offense, commits an offense and shall on conviction be liable to a fine of not less than five million shillings or to imprisonment for a term of not less than three years or both."*

According to the above provision of the law, for a person to be convicted for Publication of False Information, the following ingredients must be proved. **One,** the appellant must have published the information which should be in a form of *a picture, text, symbol or any other form*. **Two,** the publication should be done in a computer system. **Three,** the appellant must have knowledge that, such information or data was *false, deceptive,*

misleading or inaccurate. **Four,** the publication must be done with intent to *defame, threaten, abuse, insult or otherwise deceive or mislead the public or councelling commission of an offense*.

The record shows that through his informer, PW5 received information that the appellant published false information in his twitter account with intent to mislead the public. After making follow up, the appellant was arrested.

To cement what PW5 had testified, PW4 tendered in court a seizure certificate (exhibit P10) showing that, the appellant was searched and his phones/handsets were seized. The records show that, the appellant's phones were tendered in court without being objected. The same were admitted as exhibit P3 and P4 respectively. The battery of tecno cellphone was admitted as exhibit P5. Moreover, the record shows that PW3 who was a cybercrimes investigator upon receiving a letter from Kilimanjaro Region Crimes Officer, which was attached with two cellphones, he conducted forensic investigation by using laboratory software named UFED 4PC and Oxygen forensic. In such investigation, the mobile Samsung A2 (exhibit P4) was

found to have a message from the account of Japhet Matarra@eng-Matarra.

PW3 went on to testify that apart from the message, he also retrieved personal particulars of the owner of the account as well as address of the owner of the account. The report was recorded in devices together with its attachments which were admitted as Exihibits P6, P7 and P8 respectively.

With this kind of evidence on record, it is crystal clear that the prosecution side managed to show that, it was the appellant herein who published in his twitter account the said information.

In his defence, the appellant agreed that, he was searched and his two cell phones were taken by police officers. **Second,** it is not disputed that the appellant was using the said phones. **Third,** he did not object the admission of the said phones and lastly the twitter account used to publish the false information bares the names of the appellant.

The appellant's counsel only contended that the prosecution side failed to produce the machine which was used to extract data from

the appellant's phone hence failed to show how they extracted the message from the appellant's phone.

From the foregoing evidence and analysis, I am convinced that the prosecution managed to prove the first ingredient of the offence which is publishing the information. To cement that the message came from the appellant's twitter account the prosecution witness (PW4) testified as an expert in accordance with **section 205A of the Criminal Procedure Act, Cap 20 R.E 2022** and his evidence was admitted as per **section 47 of the Evidence Act** (supra). It was supported by exhibit P8 which had the following information:

> *"Owner name: JAPHET MATARRA*
>
> *Full name (Twitter): JAPHET MATARA*
>
> *Nick name (Twitter): Eng-Matarra*
>
> *Email (Twitter): matarraj@gmail.com*
>
> *Birthday (Twitter):07 July 1991)*
>
> *Location (Twitter): Manyara Tanzania.*

Note (Twitter): Father/ Husband/Human Right Activist/ Mineral processing Engineer @ JSPL corporate# Paralegal/Member @ Chadema Tz # Man UTD

Boss Himself Story Teller"

The above information was extracted from the appellant's phone (P4). Moreover, in his defence, the appellant named his personal particulars as appeared in the twitter account.

There are arguments on the issue of chain of custody in relation to the admissibility of exhibits, particularly the phones/handsets. In admission of exhibits, the chain of custody intends to ensure the genuineness of the things that are intended to be tendered in court as exhibits. The availability of the appellant's testimony that he had no objection on their admissibility and his admission on the fact the he actually used the said phones is an assurance that those exhibits were the same, which were found in appellant's possession when he was arrested and searched. Thus, the genuineness on those exhibits was there. The appellant did not say whether he was suspecting that the said phones were tempered with or not.

With regard to the second ingredient of the offence, the prosecution had the duty to prove that, the said publication was done in a computer system which has the following definition:

> *"Computer system means a device or combination of devices, including networks, input and output device capable of being used in conjunction with external files which contain computer programmers, electronic instructions, input data and output data that perform logic, arithmetic, data storage and retrieval communication control and other functions."*

The above quoted definition covers the phone/handset device. This is because the same is an input and output devices capable of being used in conjunction with external files which contain electronic instructions. As alluded earlier, evidence of all witnesses on prosecution side is to the effect that, the admitted phone Samsung A2 (P4) is the one that was used to publish the suspected message and the same was admitted in court as exhibit. In the event, the second ingredient of the offence was also proved.

Concerning the third ingredient which was **"knowledge"** of the appellant that the information he was publishing was false.

The records show that in his caution statement (exhibit P9) the appellant admitted to had published the said information. Moreover, PW1, PW4 and PW5 testified that upon interrogation the appellant confessed the allegation levelled against him. Based on these two versions of evidence, I am satisfied that, the appellant had the knowledge that the information he had published was false.

The last ingredient which the prosecution ought to have proved is that, the appellant had the intention to mislead the public.

The counsel for the appellant submitted that the alleged statements were given against the Presidents of the United Republic of Tanzania, their names were disclosed and their wealth but no one appeared in court to testify the true wealth of the mentioned Presidents or to deny the alleged information from the appellant, no victim or their representatives appeared in court to raise complaint about the alleged statement. On this issue, I join hands with the respondent's counsel that Presidential position is an institution.

Thus, it was not necessary for their Excellencies to appear in court in their personal capacity.

In his caution statement, the appellant stated that the information which he had published was not true. Also, the appellant in his defense failed to raise any doubt against the prosecution evidence. He failed to disclose source of the information he had published. He failed to prove whether he had authority or mandate to publish the same from any of the Presidents he had mentioned. As we all know that a statement in respect of any person's account is confidential. Even financial institutions cannot disclose personal account information to anyone except the owner of the account.

At this point the appellant had the duty to prove that what he told the public through his Twitter account was true wealth of the Presidents of the United Republic of Tanzania. Failure of the appellant to prove what he alleged, draw an inference that his statement was false and he intended to mislead the public.

The last issue to be considered is whether the sentence meted against the appellant was legally justified. **Section 16 of the**

Cybercrimes Act (supra) prescribes a sentence of a fine of not less than five million shillings or not less than three years imprisonment or to both. In the case at hand, the appellant was sentenced to serve five years imprisonment in default of a fine of seven million. The learned trial Magistrate gave the reasons for exceeding the prescribed minimum sentence. Therefore, the sentence which was meted against the appellant was lawful and justified.

That said, I hereby dismiss the appeal against conviction and sentence for lack of merit.

Dated and delivered at Moshi this 22nd day of January 2024.

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MOSHI DISTRICT REGISTRY

X

S. H. SIMFUKWE
JUDGE
Signed by: S. H. SIMFUKWE
22/01/2024