HOLDEN AT VUGA

CRIMINAL APPEAL NO.3 OF 2013

FROM ORIGINAL CASE NO.134 OF 2013 OF REGIONAL COURT AT VUGA

SALUM SAID SALUM … … … APPELLANT

VERSUS,

DIRECTOR OF PUBLIC PROSECUTION … … … RESPONDENT

JUDGEMENT

Date of last Order 17/09/2013

Date of Judgment 17/03/2014

ABDULHAKIM A. ISSA,J

The Appellant, Salum Said Salum was charged by the Director of Public Prosecution in the Regional Magistrate Court Vuga in Criminal Case No. 134 of 2012. The Appellant was charged on three counts of offence, namely: rape contrary to section 125(1),(2)(e) and 126 (1), abduction contrary to section 130, and indecent assault contrary to section 131(1), all of the Penal Act No. 6 of 2004. The trial started before Hon. Khamis Simai (RM) and the first witness was called and examined by the Prosecution. It was during the examination that the prosecution prayed to the Court to adduce evidence of a Video Compact Disc (VCD) which contains sexual

materials explaining the indecent assault committed by the Appellant on the victim. The Defence counsel objected to the display of the VCD as it is not recognized in our laws, particularly section 3 and 6 of the Evidence Decree. The learned Magistrate heard the parties on the objection raised and delivered his ruling on the matter. He allowed the display of the VCD and I quote his words:

> *" on the light of the above in respect to my case in hand this Court finds the video CD which the prosecution intended to be shown in this for identification is document and it is admissible in the court of law. And since does not jeopardize the right of the accused person. The court finds that there is no harm for this court to allow the watching of the same. Therefore the objection is overruled."*

The Defence being aggrieved by that decision preferred this appeal to this Court. The Appellant was represented by learned advocate, Mr. Shaib Ibrahim and the Prosecution was represented by learned State Attorney, Ms Fatma Abdalla Hassan. The Appellant filed a memorandum of appeal which contains four grounds of appeal as follows:

1. Honourable Magistrate erred in law and fact by giving electronic evidence the status contrary to the Evidence Decree, Cap. 5 of the Laws of Zanzibar.

2. Honourable Magistrate erred in law and fact by reversing his own decision after declaring electronic evidence inadmissible while he admitted its identification

3. Honourable Magistrate misdirected or contradicted himself by interpreting section 3(1) of the Evidence Decree, Cap. 5 of the Laws of Zanzibar and ruled that video CD is document.

4. Honourable Magistrate acted in error by regarding the legislature's intention in enacting section 3(1) of the Evidence Decree, Cap. 5 of the Laws of Zanzibar nugatory.

With respect to the first ground of appeal, the learned advocate for Appellant submitted that there is no dispute that electronic evidence does not exist in our laws. The ruling of RM is like propounding a new precedent. His decision was reflecting the notion that judge makes law. He is not a judge of the High Court in accordance to section 4(m) of the Interpretation of Laws and General Provisions Act. That concept is based on the hierarchy and the Appellate Court is the one having final say on the matter. He cited the case of Daudi Pete V. Republic [1980] TLR where Mwalusanya, J declares a provision of law to be unconstitutional. In his ruling the learned RM cited the case of Porter V. Porter on page 13, but the learned RM lacked jurisdiction to give such kind of a decision as he was not a judge. He prayed that the ruling of the RM be dismissed and prohibit the playing of the VCD.

With respect to the second ground of appeal, he argued that the RM in his ruling agreed that electronic evidence is not recognized in our law and is inadmissible, but at the end he went

against his own words and allow the playing of VCD. His statement was sufficient to dispose the matter and should not have turned and allow the evidence. The third count of offence on which the Appellant was charged depends solely on the VCD. He cited the case of Rajabu Ramadhan V. R (1980) TLR50. Chipeta,J was faced with the issue of when the Court becomes functus officio. The statement made was sufficient to make the court functus officio. He prayed for the Court not to allow the display of the VCD and the third count of the offence should be dismissed and the accused acquitted.

Regarding the third ground of appeal, he submitted that this issue involves legal matters and the RM interpreted VCD as a document. The word document was defined under section 3(1) of the Evidence Decree where VCD is not a document and should not have been allowed according to that definition. The authorities cited by the learned RM was based on the law of Evidence of Tanzania of 1967 and the learned RM

Cited the case of Trust Bank of Tanzania Ltd V. Le Marsh Enterprise Ltd & Others Commercial Case No. 4 of 2000. He borrowed the meaning of section 127 of the Mainland Evidence Decree which is wrong. The learned counsel for Appellant cited the case of Ali Moh'd & Another V. R. (1975) TLR 2 where the High Court of Tanzania ruled that it is wrong to read the meaning of one statute into another. He prayed the Court to find that the RM contradicts himself

in interpreting Section 3(1) of Zanzibar Evidence Decree in the light of section 3(1) of the Mainland Evidence Decree.

With respect to the fourth ground of appeal, he submitted that the RM was bias in allowing VCD on the ground that it contained summary of the evidence. The legislature did not intend to cover all situations in section 3(1) and the Court should make the distinction between procedural and substantive law. Section 3(1) was construed erroneously by the learned RM. He added that this appeal is of its kind as there is no case like this and there is no precedent on the electronic evidence. He prayed that the decision of the RM should be overruled and the third count of offence be dismissed.

The learned State Attorney on her side responded by objecting to all grounds of appeal and insisted that the decision of the RM was correct. Starting with the first ground of
appeal, she submitted that the learned RM was right in according the electronic evidence the status of documentary evidence and admit it as the best evidence as it is original and supports the evidence brought in Court. The VCD arises from the testimony of PW1, Farid Ali Hemed which show how the offence of indecent assault against the victim was committed and who was responsible. In collaborating the evidence of PW1 the VCD was the recording of the evidence testified, and there was a need of playing the VCD in Court. The prosecution believed the VCD was primary evidence

according to section 61 and 62(1) of the Evidence Decree. The proper foundation was the testimony of PW1 which was there and the Court was right in allowing it. She cited the case of Kirenga V. Uganda Criminal Appeal No. 117 and 118. 1969 EA 562 where the Court was discussing admissibility of tape recording. The court ruled that it is admissible as the proper foundation has been made. The same apply to the admissibility of the VCD in this case. She also cited the case of Castle V. Cross 1985 Vol. 1 All ER 87. This case explains the issue where the prosecution relied on a printout of the computer devices. The Court ruled that the printout were admissible evidence. She emphasized that the Court should accept and admit electronic evidence in the view of development of science and information technology.

With respect to the second ground of appeal, she submitted that the RM did not reverse his own decision, what he did is the analysis of the arguments presented before him. On page 11 of the proceedings paragraph 4 and 5 shows the analysis of the issues. It does not say that electronic evidence is not admissible. He continued on page 13 paragraphs 2 where he allows the new technology in our courts. On that matter the Court was never functus officio.

Regarding the third and fourth ground of appeal which are based on section 3(1) of the Evidence Decree, she submitted that

the RM was right on looking at the legislature's intention by the increase of the effect of technology in our lives. The production of electronic evidence has become a necessity in most cases in establishing the guilty of the accused. The judicial mindset should change with the changes in the society. The Court can interpret law and amend the law to accommodate those changes. In India electronic records are considered as documents and they are primary evidence. Section 3 of the Indian Evidence Act is very clear on this matter. The Court can include VCD as the document as there are matters recorded therein equivalent to marks and figures stipulated in section 3(1) of the Evidence Decree. On the side of the case of Trust Bank which was decided in Mainland and objected by the Appellants she submitted that there are many
instances where we are taking precedents from Mainland High Court though we are not bound to follow them. He urged the Court to follow the Trust Bank Case and we should not be ignorant of modern business. The Court should consider the VCD as a document per section 3(1) and apply it as the best rule of evidence.

She further cited the case of Macdonald v. Evans 1852 Common Please 21 LJCP141, where the Court in England ruled that the best evidence must depend on the circumstances. When the evidence is a document, no other evidence is admissible other than the document. And in the case of R. V. Shefferdf 1993 1 All ER 225 HL, where the records that are linked to a central computer on a shop

were produced and the Court ruled that so long as it could be shown the computer was working properly and could not be misused it can be admitted as evidence. She submitted that in all these examples it is shown that electronic evidence is important and cannot be left out. The court should be active in seeing the lacunae in our laws and allow the electronic evidence to be used in our courts. She prayed that the decision of the RM should be upheld and the appeal be dismissed.

The learned advocate for Appellant in his reply submitted that all cases cited by the Respondents' counsel were from Britain where their law has been already reformed, which I entirely agree. And the case of 1852 was based on the circumstantial evidence which could be admitted. The main issue in this case is admission of electronic evidence. Britain amended their laws in 1968, but in our case there are no amendments, hence, electronic evidence should not be accepted as a document and should not be admitted. Admissibility depends on the relevancy and it should not infringe existing rules. He added that the VCD is not a document under section 3. The decision of Mainland also does not conform to our laws and is not accepted. He concluded that in Zanzibar we have no law admitting electronic evidence.

From the above submissions from the advocates of both sides, it is very clear that the points of contention and determination of this Court is whether the Electronic evidence is recognized in our laws

and in particular whether the VCD falls under the definition of documents in section 3(1), and second whether the VCD is admissible in Court under the Evidence Decree.

These point of law is a novel one as it has not been dealt with previously by our courts. As rightly submitted by the Appellant's Counsel, the admissibility of electronic evidence in criminal proceedings is not yet part of our laws. A novel legal issue as it is obviously creates some challenges to courts which necessarily call for judicial innovation as it holds a stake in the development of the law in so far as the admissibility of electronic evidence is concerned. The proliferation of computers, the social influence of information technology and the ability to store information in digital form have all brought new challenges in our laws.

The VCD the Prosecution sought to be admitted as evidence to support their claim is central to this appeal. This Court however, is being called upon to consider the admissibility of electronic evidence in criminal proceedings generally, which admittedly is not yet covered under our laws of evidence or criminal procedure. But in this judgment I will confine myself with the issue of VCD only and will not address the issue of electronic evidence in general as that is a very wide concept which includes numerous concepts, ideas, devices and procedures, which could be suitable dealt with by a

legislation rather than judicial pronouncement. This Court therefore in dealing with the matter before it is doing so without the benefit of any express enactment on admissibility of electronic evidence generally, and without any precedent from our courts on admissibility of VCD to fall back on.

But the Courts in numerous occasions are faced with this task and to quote the words of Lord Denning in **PACKER V PACKER [1954] P 15** that:

> "…*If we never do anything which has never been done before, we shall not get anywhere. The law will stand still whilst the rest of the world goes on: and that will be bad for both*."

In the present case, the duty of this Court is to look on the words in the existing laws and then to see whether the learned RM was right in extending them to cover electronically stored information. This task will be done with the assistance of judicial pronouncements of some countries which had a similar evidence law as ours.

It was in 1875 when the Indian Evidence Act from which our current Evidence Act, 1917 derives was promulgated; the modern methods of making VCD by computers were not yet in existence. This Court however, given technological revolution in information communication which has been sweeping the world since the last

century, cannot afford to hide behind old ways of communicating by refusing to accept other types of electronic evidence, which may carry electronic information capable of being stored on computers and viewed through different devices such as television, computer and projector.

To start with the word "document" is defined in section 3 of the Evidence Decree of 1917 as follows:

""document" means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means intended to be used, or which may be used, for the purpose of recording that matter;"

This definition which was enacted in 1917 no doubt was suitable and satisfactory in those days, but to apply this definition in 2014 would be ubsurd. Many countries have amended their laws and expanded this definition to accomodate electronic evidence. For instance, UK amended its law in 1968, India amended its law in 2000, Tanzania Mainland amended its law in 2012. But Zanzibar Evidence Decree has remained untouched since its enactment. The Concept of what is document is clealy expained in R. V. Daye 1908, 2KB 333: a document has been defined as "any writing or printing capable of being made evidence no matter on what material it may be inscribed".

Further, Sarkar on Evidence on page 44d defines document as: "under the term document are properly included all material substance on which the thoughts of men are represented by writing, or any other species of conventional mark or symbol.

Under these definition it is very clear that document can be any material, such as paper, wood, tree etc. Where the thoughts of men can be represented through writing, mark or symbol or through combination of them. Hence, information
recovered on a computer without the intervention of a human mind under this definition is not a document. But it is a real evidence.

This takes us to the definition of evidence as found in Section 3 of the Evidence Decree. It reads:

"evidence" means and includes –

a) All statements which the court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry: such statements are called oral evidence;

b) All documents produced for inspection of the court:

Such documents are called documentary evidence;

Although evidence can be classified in many ways such as direct and indirect evidence, real and personal evidence, corroborative and uncorroborative evidence etc. The above

definition has reduced the evidence in two heads: (1) oral evidence and (2) documentary evidence. Sarkar on evidence on page 48 commenting on this definition wrotes: "The meaning of the word "evidence" as given in the Act is not complete. There are other matters which are also treated as evidence...". for instance there are material things such as instruments with which a crime was committed or the property to which damage has been done. These are the material evidence and under section 60 of the Evidence Decree if oral evidence refers to the existence or condition of any material thing, the Court may require its production.

In this case we are faced with the issue concerning VCD which is defined in Longman Dictionary as follows: "video disc" a disc similar to a gramophone record, on which information is stored in digital form and is used to play back prerecorded video material on a television screen, as a computer memory unit, etc. Before the invention of VCD we had tape recorders and the Courts were faced with the issue of tendering and admissibility of tape recorded conversation before law courts as evidence, particularly in cases arising under the Prevention of Corruption Act, where such conversation is recorded by sending the complainant with a recording device to the person demanding or offering bribe. In civil cases also parties may rely upon tape records of relevant conversation to support their version. In such cases the court has to

face various questions regarding admissibility, nature and evidentiary value of such a tape recorded conversation.

The Indian Evidence Act, prior to its being amended by the Information Technology Act, 2000, like our Evidence Decree as we have seen above mainly dealt with evidence, which
was in oral or documentary form. Nothing was there to point out about the admissibility, nature and evidentiary value of a conversation or statement recorded in an electro-magnetic device. Being confronted with the question of this nature and called upon to decide the same, the law courts in India as well as in England devised and developed principles so that such evidence may be received in law courts and acted upon.

In Hopes v. H.M. Advocate, 1960 Scots Law Times 264, the court while dealing with the question of admissibility of tape recorded conversation observed as under:

> *"New techniques and new devises are the order of the day. I can't conceive, for example, of the evidence of a ship's captain as to what he observed being turned down as inadmissible because he had used a telescope, any more than the evidence of what an ordinary person sees with his eyes becomes incompetent because he was wearing spectacles. Of course, comments and criticism can be made, and no*

doubt will be made, on the audibility or the intelligibility, or perhaps the interpretation, of the results of the use of a scientific method; but that is another matter and that is a matter of value, not of competency. "

An authoritative and categorical exposition on this point is found in Rex v. Maqsud, 1965(2) All ER,461 wherein the Court of Criminal Appeal observed that the time has come when this court should state its views of the law, matter which is likely to be increasingly raised as time passes. For many years now photographs have been admissible in evidence on proof that they are relevant to the issues in involved in the case and that the print as seen represents situations that have been reproduced by means of mechanical and chemical devices. Evidence of things seen through telescopes or binoculars which otherwise could not be picked up by the naked eye have been admitted, and now there are devices for picking up, transmitting and recording conversations. In principle no difference can be made between a tape recording and a photograph. The court was of the view that it would be wrong to deny to the law of evidence advantages to be gained by new techniques and devises.

In India, the earliest case in which issue of admissibility of tape-recorded conversation came for consideration is Rupchand v. Mahabir Prasad, AIR 1956 Punjab 173. The court in this case though

declined to treat tape-recorded conversation as writing within the meaning of section 3 (65) of the General Clauses Act but allowed the same to be used under section 155(3) of the Evidence Act as previous statement to shake the
Credit of witness. The Court held there is no rule of evidence, which prevents a party, who is endeavoring to shake the credit of a witness by use of former inconsistent statement, from deposing that while he was engaged in conversation with the witness, a tape recorder was in operation, or from producing the said tape recorder in support of the assertion that a certain statement was made in his presence.

In S. Pratap Singh v. State of Punjab, AIR 1964 SC 72 a five judges bench of Apex Court considered the issue and clearly propounded that tape recorded talks are admissible in evidence and simple fact that such type of evidence can be easily tampered which certainly could not be a ground to reject such evidence as inadmissible or refuse to consider it, because there are few documents and possibly no piece of evidence, which could not be tempered with. In this case the tape record of the conversation was admitted in evidence to corroborate the evidence of witnesses who had stated that such a conversation has taken place.

The Apex Court in Yusuf Alli v. State of Maharashtra, AIR 1968 SC147 considered various aspects of the issue relating to admissibility of tape recorded conversation. This was a case

relating to an offence under section 165-A of Indian Penal Code and at the instance of the Investigating Agency, the conversation between accused, who wanted to bribe, and complainant was tape recorded. The prosecution wanted to use this tape recorded conversation as evidence against accused and it was argued that the same is hit by section 162 CrPC as well as article 20(3) of the constitution. In this landmark decision, the court emphatically laid down in unequivocal terms that the process of tape recording offers an accurate method of storing and later reproducing sounds. The imprint on the magnetic tape is direct effect of the relevant sounds. Like a photograph of a relevant incident, a contemporaneous tape record of a relevant conversation is a relevant fact and is admissible under section 6 of the Indian Evidence Act.

The Apex Court after examining the entire issue in the light of various pronouncements laid down the following principles:

a) The contemporaneous dialogue, which was tape recorded, formed part of res-gestae and is relevant and admissible under section 6 of the Indian Evidence Act.
b) The contemporaneous tape record of a relevant conversation is a relevant fact and is admissible under section 6 of the Indian Evidence Act.

c) Such a statement was not in fact a statement made to police during investigation and, therefore, cannot be held to be inadmissible under section 162 of the Criminal Procedure Code.
d) Such a recorded conversation though procured without the knowledge of the accused but the same is not elicited by duress, coercion or compulsion nor extracted in an oppressive manner or by force or against the wishes of the accused.

Therefore the protection of the article 20(3) was not available.

e) One of the features of magnetic tape recording is the ability to erase and re-use the recording medium. Therefore, the evidence must be received with caution. The court must be satisfied beyond reasonable doubt that the record has not been tampered with.

The tape recorded conversation can be erased with ease by subsequent recording and insertion could be superimposed. However, this factor would have a bearing on the weight to be attached to the evidence and not on its admissibility. Ultimately, if in a particular case, there is a well grounded suspicion not even say proof, that the tape recording has been tampered with that would be a good ground for the court to discount wholly its evidentiary value.

In the case of Ram Singh v. Col. Ram Singh, AIR 1986 SC 3, following conditions were pointed out by the Apex Court for admissibility of tape recorded conversation:

a) The voice of the speaker must be duly identified by the maker of the record or by others who recognize his voice. Where the maker has denied the voice it will require very strict proof to determine whether or not it was really the voice of the speaker.

b) The accuracy of the tape recorded statement has to be proved by the maker of the record by satisfactory evidence direct or circumstantial.

c) Every possibility of tempering with or erasure of a part of a tape recorded statement must be ruled out otherwise it may render the said statement out of context and, therefore, inadmissible.

d) The statement must be relevant according to the rules of Evidence Act.

e) The recorded cassette must be carefully sealed and kept in safe or official custody.

f) The voice of the speaker should be clearly audible and not lost or distorted by other sounds or disturbance.

In the case of Ziyauddin Burhanuddin Bukhari v. Brijmohan Ramdas Mehta, AIR 1975 SC 1788, the Apex Court considered the value and use of such transcripts and expressed the view that transcript could be used to show what the transcriber has found

recorded there at the time of transcription and the evidence of the makers of the transcripts is certainly corroborative because it goes to confirm what the tape record contained. The Apex Court also made it clear that such transcripts can be used by a witness to refresh his memory under section 159 of the Evidence Act and their contents can be brought on record by direct oral evidence in the manner prescribed by section 160 of Evidence Act. Further if clearly laid down that the tape recorded speeches were "documents as defined by section 3 of the Evidence Act", which stood on no different footing than photographs.

Now the question is whether such evidence is primary and direct or secondary evidence and indirect. In N.Sri Rama Reddy v. V.V. Giri, AIR 1971 SC 1162, the court held that like any document the tape record itself was primary and direct evidence admissible of what has been said and picked up by the receiver. This view was reiterated by the Apex Court in R.K. Malkani v. State of Maharashtra, AIR 1973 SC 157. In this case the court ordained that when a court permits a tape recording to be played over it is acting on real evidence if it treats the intonation of the words to be relevant and genuine. Referring
to the proposition of law as laid down in Rama Reddy's case (Supra), a three judges bench of the Apex Court in the case of ZiyauddinBurhanuddinBukhari v. BrijmohanRamdas Mehta, AIR 1975 SC 1788 propounded that the use of tape recorded conversation

was not confined to purpose of corroboration and contradiction only, but when duly proved by satisfactory evidence of what was found recorded and of absence of tampering, it could subject to the provisions of the Evidence Act, be used as substantive evidence. Giving an example, the Court pointed out that when it was disputed or in issue whether a person's speech on a particular occasion, contained a particular statement there could be no more direct or better evidence of it than its tape recorded, assuming its authenticity to be duly established.

From the aforesaid it can well be gathered as a settled legal proposition that evidence of tape recorded conversation being primary and direct one it can well be used to establish what was said by a person at a particular occasion. Under section 157 of the Indian Evidence Act, a witness may be corroborated by his/her previous statement. Section 145 of the Act permits use of a previous statement for contradiction of a witness during cross-examination. Again clause (1) of section
146 provide that during cross examination, question may be put to a witness to test his veracity.

In the same vain the East Africa Court of Appeal was faced with a similar situation in the case of Kirenga V. Uganda [1969] E.A.C.A. 562. In this case two police officers were charged with inciting perjury and attempting to interfere with a witness and they

were convicted by the Chief Magistrate. On appeal to the High Court of Uganda, the main ground was that tape recorded evidence admitted to corroborate was inadmissible as it is not evidence as defined by section 3 of the Uganda Evidence Act, which reads: "evidence denotes the means by which any alleged matter of fact, the truth of which is submitted to investigation, is proved or disproved and includes statements by accused persons, admissions, judicial notes, presumptions of law, and ocular observation by the court in its judicial capacity". The court held:

> *"I cannot agree... that the definition of evidence is limited to the three types of evidence.... It includes (but is not the only means) (a) statements by the accused persons, (b) admission, (c) judicial notice, (d) presumptions of law, (e) ocular observation. What the accused told the Sergent was very much a matter of fact which was submitted to*
> *Investigation by the court. Evidence given by the Sergent of the conversation between him and the accused was not only admissible in court, but was essential for the successful prosecution of the case. That would sometimes be imperfect by reason of a faulty memory or imperfect hearing. It was not denied, or argued, that a tape recording of a conversation when properly conducted is perfect. It would contain everything which the accused, or the witness, said and not merely the recollection of what the witness or accused had*

said. Properly conducted, and laid, the tape recorded conversation could, and would therefore be infinitely superior to that of oral evidence by a witness of what he heard or thought he heard the witness or accused say."

The Court of Appeal cited a previous case of Reg. V. Raojibhai Girdharbhai Patel and Another (1956), 23 E.A.C.A 536 where the Court had to deal with the question of tape recordings as evidence and it held that "where a proper foundation had been laid, such evidence (recorder, recording and transcriptions) is admissible and recording may be played back in Court". The Court also cited an English case of R. V. Ali hussain (reported in Criminal Law Review 1965 at page 373), which is before the amendment of the English Evidence Act. The Court held:

"There is no difference in principle between a tape recording and a photograph. A tape recording is admissible in evidence provided the accuracy of the recording can be proved, the voices properly identified and the evidence is relevant and otherwise admissible. Such evidence should always be regarded with some caution and assessed in the light of all the circumstances. But there could be no question of laying down any exhaustive set of rules regarding the admissibility of such evidence".

From this decision of the Court of Appeal of East Africa, and from the case of Ram Singh v. Col. Ram Singh (Supra) three guide lines can be adduced regarding the admissibility of the tape recording evidence. These guidelines are: (1) the accuracy of the recording can be proved, (2) the voices are properly identified and (3) the evidence is relevant and otherwise admissible. Coming to the case in hand it is very clear that VCD is not part of the document as envisaged in section 3 of the Zanzibar Evidence Decree. But the scope of the term evidence under the Decree is inclusive and this allows VCD to fall under evidence as envisaged by the Decree, it is a real evidence which is allowed in our Evidence Decree. But this real evidence also has to fit in the above three guidelines.

The first is the accuracy of the VCD, here the Court has to look on the VCD and see whether the picture and actions in the VCD are those of the people who are claimed to be. There is not tampering or superimposition of the images on the VCD. This also will be determined by looking whether the VCD is writable or it is rewritable. In the first case it is easy to conclude on its accuracy as it can not be erased and rewritten. But in the later case more caution should be taken by the Court.

The second guideline is whether the voices and in this case the picture properly identified. The voices of those people in the VCD and their pictures should be identified, but we should remember that

in some VCD there is no sound or voices at all they are just live pictures of the people taken and sometimes without their knowledge. Hence, one criterion should be sufficient in identifying those people who are in the VCD.

The third criteria are that the evidence must be relevant and otherwise admissible. Here, before the VCD is admitted in Court it must be shown that it is relevant with the issue before the Court, and the party who purports to show the CD must show its relevancy whether it is a secondary evidence, a corroborative evidence etc. And hence, the admissibility of such evidence must also fall on one or more of the provisions of the evidence decree.

This appeal was centred on the issue of whether the VCD fall under the definition of document under the Evidence Decree, which as explained above I have already held negative and the learned RM erred in expanding that definition to such and extent to include the VCD. But the VCD is an evidence which is recognized in our law; this court can not hide itself and shy away in embracing the technological revolution existing in our society. The issue of admissibility is also very clear
that the VCD is admissible as long as it satisfy the above three guide lines. The third which is very important needs more elaboration. The VCD can be admissible in our Evidence Decree under section 6 as part of Res gestae

By and large in view of the above explanation I see no reason why the Video Compact Disc (VCD) should be excluded from evidence if properly laid and conform with the above guidelines. Hence, the appeal is dismissed and the case
is sent back to the Regional Magistrate Court to continue with the hearing.

It is so ordered.

Sgd: Abdulhakim Ameir Issa, J

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

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REGISTRAR HIGH COURT,

ZANZIBAR