

IN THE DISTRICT COURT OF ILALA

AT SAMORA AVENUE

CRIMINAL CASE NO 240 OF 2013

THE REPUBLIC

VERSUS

1. SAYI KAPAMA

2. RIGORBET MASSAWE

JUDGMENT

Hon. A. A. Sachore (RM)

On 29th August 2013 Sayi Kapama and Rigorbet Masawe together were charged with 7 counts. However on 3rd September 2015, prosecution prayed to amend the charge under section 234(1) of CPA. The court granted prayers of amending the charge on 10th September 2015. Therefore the earliest charge sheet was substituted. In the substituted charge sheet, accused were charged with seven counts; first count is conspiracy to commit an offence contrary to section 385 and 35 of Penal Code Cap R:E 2002, second to seven counts regards Violation of copyrights contrary to section 9(1)(a)(b) and 42(1)(a) of the Copyright and Neighbouring Rights Act Cap 218 R:E 2002.

Particulars of the offences for second to seven counts have same wording which states that, accused unlawful reproduced and distributed copies of

different audio visual titled NAKWENDA KWA MWANANGU, HATIA and GLORY OF RAMADHAN without authorization of the copyright owner. When the charge was read over the accused persons in the language understood to them, they pleaded not guilty in all seven counts.

Mr. Awamu. A. Mbagwa the senior state attorney appeared on behalf of the state and Mr. Mwakalasya the learned advocate represented accused persons. Prosecution summoned six witnesses who testified against accused persons.

IGNATUS DNKAN KAMBARAGE after taking oath testified as PW1. He stated as follows; that he is a copywriter inspector and relations officer of Steps Entertainment, the company which deals with production, distribution of film and music in Tanzania. He said that, on 7/8/2012 he went to central police station to report the crime and he was given police men to conduct search on a certain shop which was suspected of copying audio visual CD without authorization of the author. He said that, that shop is located at Magila Street near Lutheran Parish at Kariakoo. They found accused persons in the shop and one woman.

PW1 stated also that, police conducted search inside the shop and in the car. He said that, search was conducted in the presence of ten cell leader. He added that, the type of car was Suzuki with red colour parked in front of the shop. PW1 testified further that, copied films with title HATIA, MWALIMU NYERERE, NAKWENDA KWA MWANANGU, GLORY OF RAMADHANI, and other films

belonging to other companies were found by police in the shop during the search. Also he said that, CDs which were yet to be parked, films mentioned above and other one titled BIG DADY were found in the car.

PW1 continued to say that, accused persons, one woman and films found were taken to police station. He said that, Afande John Mbezi was the in charge of the operation. He also said that, when they were about to leave from the shop to central police, other companies' representative came to identify their product. He stated that, police officers went to search premises of the accused persons and found stickers, hologram and some films.

PW1 said that, he managed to identify the films because their films are made by oil while the ones which accused persons were found with, are made by water. He then said that, original films have thin paper while fake one does not have thin paper. He continued to say that, the cover of the film belongs to their company but had different material from ALLY LIUM COMPANY. PW1 contended further that, accused persons were found in possession of hologram stickers of Steps Entertainment and GMC unlawful because it's only steps entertainment which is supposed to possess such stickers. Lastly PW1 said that, Steps Entertainment is the producer of all films mentioned above.

In cross examination PW1 stated that, after production of films, Steps normal sent them to wholesalers, agents, others to their shops and some outside the country. He said that, in DSM they own three shops; one at Mbagala, others at Kigamboni and kariakoo. He said that, it is possible that stickers which were

found in the premises of accused belong to Steps because, there were some stickers which were missing and the matter were reported to the police. Lastly he said that, their stickers are made in China. In re-examination PW1 stated that the films which were found in the possession of the accused persons was fake CDs seems to be theirs.

INSPECTOR JOHN SAMWEL testified as PW2. After taking oath he said that, he is an investigator working in investigation department of police force. He said that, the early of 7th/8/2012 he was instructed by ASP Maliro to go to the RPC's office. He went there and informed that, they received information from Steps Entertainment that at Kariakoo there was a shop which sells forged/duplicated CDs. He was instructed to go and conduct search. Then he said, he turned back to his office and appointed D/sgt Omary and Dc Emmanuel, they took search warrant and headed to Steps Entertainment office to take the informant who will help to identify the alleged shop. They went to Magila street with Kambarage, Dotto and Meshack from Steps Entertainment. When they arrived at the alleged shop they founded accused persons and one woman named Happiness. Then PW2 pointed first and second accused in court saying that, are the ones which were inside the shop. After introducing themselves and in the presence of VEO, they started to conduct search.

PW2 continued to say that, during search, they managed to find 378 different duplicated CDs in the shelves, 101 CDs which were in the box, 44 empty cover in black and two envelopes with printed paper having pictures

which are used to be placed on top of the CD. PW2 said that, all properties named above were found in the shop. He said, they listed all property in the certificate of seizure. They realized those CDs were fake and forged one after being identified by Steps Entertainment officials. PW2 tendered record of search by police attached by 2 handwriting report which this court admitted and marked as exhibit P1 respectively. PW2 stated that, they also conducted search on a vehicle with reg. T608BWB, Suzuki Escudo which was parked 2feet from the shop and found three boxes of which one had 100 CDs titled GLORY OF RAMADHAN, 2nd box with 100 CDs titled HATIA and third box had 100CDs titled NAKWENDA KWA MWANANGU. They also found other 100 CDs titled GLORY OF RAMADHAN which were parked in into 2 shells each having 50 CDs, 2CDs titled MPENZI CHOCOLATE, empty covers and two envelopes with printed paper having pictures which are used to be placed on top of the CD. PW2 stated that, the said vehicle belongs to SAYI KAPAMA who is the first accused person. Then he said that, Exhibit P1 has two attachments; one has list of properties found in the shop and the other has list of properties found in the vehicle.

PW2 stated further that, they also conducted search in the premises of accused persons. He said their houses are located at Kimara. That nothing was found in the house of 2nd accused but in the house of 1st accused they found one scanner make HP model 2410 scan jet, one printer make Epson model 660 which has broken screen, one printer model 2430 make HP desk jet, another printer model 2480 make HP desk jet, 5 CD rom make LG, 25 sticker for Steps Entertainment, 35 stickers for GMC Tanzania, one brown box with different CD's,

one bucket with various CDs, two boxes, 8 luggage with various CDs, one bag with empty covers which had CDs, and other items as listed in the record of search. PW2 tendered record of search of police attached with one handwriting report which this court admitted and marked as exhibit P2. Other exhibits which was tendered by PW2 which includes; 25 stickers for Steps Entertainment which was admitted and marked as exhibit P3, 35 stickers for GMC which was admitted and marked as exhibit P4, properties found in the motor vehicle which this court identified, admitted and marked as exhibit P5, properties found in the shop which this court identified, admitted and marked as exhibit P6, properties founded in the house 1st accused as listed in exhibit P2 were identified, admitted and marked as P7. PW2 stated that the vehicle is still at the police station.

Lastly PW2 stated that, he believes that, accused persons duplicated CDs seized because of the nature of exhibit which were found in their position. He said that, the two accused persons are the owner of the shop in which duplicated CDs were found, the other woman found in the shop were just an employee who knows nothing about the crime. He said that, the whole process of duplicating CDs was being conducted at the home of first accused and the seized vehicle was the one which was transporting the duplicated works.

In cross examination PW2 stated that, he recognized CDs as copy/duplicate after being told by Steps Entertainment officials. He also said that, police force had department to identify original and fake products but he

does not know if there was any report issued to prove counterfeit. What he knows is that, Steps officials was interrogated by counterfeit people. He then said that, they did not found computer at Sayi's home. And he ended by saying that any person is allowed to witness search.

AMANDUS NGWADA also known as Dotto testified as PW3. After taking oath he stated that, he works at Steps Entertainment as copywriter and inspector. On 07/8/2012 he received information from their informer that there is a shop which sells their product illegal. He said he reported the matter to the police and they were given police officer to help conduct the search. Then he said they went to conduct search at 11th shop situated at Magila street-Kariakoo. PW3 contended that, SAYI KAPAMA, REGOBRT MASAWA and one woman were found in the shop. He pointed 1st and 2nd accused saying are the ones which were in the shop. He said that, when searching they found different films which were GLORY OF RAMADHAN, HATIA, and NAENDA KWA MWANANGU. He also said that when searching he was with PW2. He said that, those CDs were fake because original CDs have oil ink but those which were found had water ink. He also said that, the original CD has a sticker which sparks with soft paper which was made out of oil ink but fake CD has printed paper. He continued to say if original CD is scratch, it will not be damaged, out of that is fake. He said that, if fake CD is scratched, the printed material will be removed. He said further that fake CDs are deteriorated. PW3 tendered @2 copies of original CDs titled GLORY OF RAMADAN, HATIA, NAKWENDA KWA MWANANGU which this court admitted and marked as exhibit P8 respectively.

In cross examination PW3 started that he has never gone to school to study about film productions but he has an experience of seven years dealing with CDs production. He said that, their machines is advanced one which print in oil form. Lastly he said that, he does not know where accused persons obtained the original sticker. In re examination he said that, he started working at Steps in 2002 and that the duty of ensuring security in their company is not his.

CLAUD NGALABA testified as PW4. After taking oath he stated that, he works at Steps Entertainment as HR officer. That entering into contracts with artists on behalf of the company is one among his duties. He said that, the essence of entering into contracts with artists were to protect economic rights owned by the company. He stated that, economic rights includes production, distribution, supply and to restrict any person from dealing with their property.

PW4 continued to say that, being HR officer he entered into contract on behalf of the company with Jerusalem Film Company for the production of NAKWENDA KWA MWANANGU film. He tendered the said contract which this court admitted and marked as exhibit P9. He tendered another contract he entered with RJ Company for production of GLORY OF RAMADHAN which was admitted and marked as exhibit P10. He also tendered contract with Tino Muya Films for the production HATIA film which this court admitted and marked as P11. PW4 said that, clause 10 of the exhibit P9, P10 &P11 stipulates that, rights to produce, distribute and sell are only vested to Steps Entertainment.

In cross examination PW4 stated that, Steps Entrainment is owned by Dilesh Silank and Yogesh Kanji. That the film NAKWENDA KWA MWANANGU is owned by the company but the contract says it is owned by Claude Ngalaba(PW4). In re examination PW4 said that, he signed contract as representative of Steps Entertainment.

ESTER LEWIS testified as PW5, after taking oath she said that, she is a ten cell leader lives at Magila Street-Kariakoo. She said that on 7/8/2012 police officer went to her place and told her that, she should go with them to conduct search at a certain shop. She said that the search was conducted at the shop of first accused. In that shop there were police officers, the owners of the shop and Steps officials. She said that, the search was about CDs which were not genuine. PW5 pointed 1st & 2nd accused and said that, are the ones who own the shop. She said further that, the search was conducted in the shop and at the car and in the end she signed certain papers which concerned with issue of CDs. PW5 when shown the said papers she recognized them.

In re examination PW5 stated that, she is a CCM ten cell leader. She said that, she does not remember the number of police officers who were there but what she remembers is that, she was told that they were going to search for fake CDs although to her all CDs she saw was the same.

JAIRAJ DAMODARAN testified as PW6. After taking oath he stated that, he is the executive director of Steps Entertainment. He said that, his company deals with the production, distribution of Swahili movies, and manufacturing of DVD's

and VCD's. He said that, he has been dealing with production of movies since 2007. He said that, they normal generate one master copy in which other copies are generated into DVDs and VCDs. After parking, they distributed them in the market.

PW6 continued to say, in 2012 they were printing CDs using offset Printing machine. He said that, offset machine has ultra violet ink which has high quality. Its ink dries very fast. It is a scratch and water proof. He said that, they do print in order to identify the type a movie which is inside the CD but also for future security purpose because it cannot be scratch or been affected by water. PW6 when given P5 stated that, they are not a genuine movie produced by Steps because their cover can be taken away just by scratching the CDs. PW6 demonstrated how it easily to remove the cover on the fake CDs by scratching them. He also said that, those CDs are not water proof. When given exhibit P8 which are original CDs produced by Steps, he said that, the CDs are their product. He said that, upper layer cannot be removed by scratching and are water proof. PW6 demonstrated by applying the water on the CDs but the upper layer did not go away but when he put water on the fake CDs, they got damaged.

In cross examination, PW6 stated that, they started with duplication of CDs but currently they are using replication. He said that, the original CDs in court were made by duplication. He said that printing by duplication and replication are the same. Lastly he said that, he was not at the scene area when the said

fake were found, what he knows is fake product are not theirs. In re-examination, PW6 stated that, they do not have fake CDs instead they have only original CDs with the same quality.

Later after amendment of charge sheet prosecution prayed to recall PW2 under section 195(1) of CPA and section 147(5) of TEA. This court granted the prayers and PW2 was recalled. PW2 stated that he took the statement of first accused on 8th/8/2012. He said that accused was arrested on 7th/8/2012. He said that, due long search and DSM traffic jam they reached at police station at 22:00hrs therefore was not possible to take caution statement on same date of arrest.

He said that, before taking accused statement he explained to about his right of call a lawyer, relative or a friend to witness the taking of the statement, and or he is free to give his statement. Accused opted to take the statement in the absence of any witness. Then he said, he took the statement and after taking it he read it over the accused and signed. He tendered the said caution statement which was read in court admitted and marked as exhibit P12. PW2 added that, when they searched the premises of first accused one woman called Abela was the one who witnessed the search.

He continued to say that, the seized motor vehicle is at central police, it has not operated since 2012, so it cannot move. The court moved to central police and PW2 showed T608BWD and asked the court to admit it as exhibit.

T608BWD which was found with properties listed in exhibit P1 was admitted and marked as exhibit P13.

In cross examination PW2 stated that accused reached at police station at 22:00hrs. Accused opted to call his advocate but failed. Interrogation was started in the next day at 10:00hrs. He also said that the law requires statement to be taken within four hours but there is an exception. He also said that he did not remember if he did seek extension. PW2 continued to say that, accused admitted to have copied other films but not those which belongs to steps entertainment. He repeated testifying that he did not find computer in the shop, car or at home. He lastly said that, he does not think if computer is an important instrument in duplication CDs

Prosecution closed their case and this court after referring written submission by the two parties; one saying that there is no case to answer and the other saying there is a case to answer and after going through the evidence adduced before the court, this court ruled that, accused persons have *prima facie* case to answer.

Then defence case began following the ruling of the court above. Defence counsel summoned two witnesses.

SAYI KAPAMA who is the first accused testified as DW1. After taking oath he stated that, he is a business man dealing with empty CDs movie, CD covers and accessories of CDs. He said that, he conducts his business at Magila Street-Kariakoo.

He said that, on 7/8/2012 around 09:00hrs while at his shop with his colleague, 4 people came, 2 of them were persons from Steps Entertainment whom he knows. He said that, they were put under arrest and the door was closed. He said that during the search, police officers took business licence, CDs and empty covers. He said that, they took CDs randomly without telling them which ones were fake. He stated that, Steps officers were the ones who were showing those CDs to police officers. He stated that, all CDs from Steps Entertainment were what were taken. Nothing was else was found or taken. He state that, all CDs were counted and he signed but no CDs which were found in the car. He also said that all items were put in the box and his car was the one which carried those CDs to the police station. At the police station, they lifted the box and went to mbezi police station and later to his home. When they entered in his home, they found his younger brother to who police officers introduced themselves. There after a neighbor was called to witness the search. DW1 continued to say that, during the search there were two police officers, two steps officials, one woman, his younger brother and his co-accused. He said that, four scanners was found in the store but they didn't even knew if there were scanners because they were left by the owner of the house who were shifted to work in another region. He said that, they started to live there since 2011. He also said that, he does not know why stickers were put in the list of items which were found in the house because stickers cannot be found somewhere else except from their company. He believes that the said stickers were planted by steps officers.

DW1 continued to say that, they went to the place where 2nd accused lives and found his wife. Then they entered the house and search was conducted but nothing was found. After that he said they returned to police station around 19hrs and were put to police custody until the next day where their caution statement was recorded. He said that, he recorded his statement while PW1 was there. That he was given his statement to read he rejected to sign because it had other words which was not his, therefore he opted to add other words below the original ones and signed. DW1 asked the court to use his words at the last page of his caution statement which read "*I have no ability to duplicate CD, neither do I distribute fake CD nor do I have the computer*" to be used as part of his evidence. DW1 stated further, police delayed to bring the case before the court with the reasons that CDs were sent for inspection to identify which were fake CDs but there were no report which shows the CDs were fake or not. He said that, their shop is located 100 meters from where Steps offices are located. He said that, all CDs which were taken from their shop were original one. They do buy original CDs from different companies. He said that, if their CDs were fake then why prosecution did not summon a client who bought fake CD. Also he said why they didn't send a person to buy a CD from their shop so they can use it as evidence. Lastly DW1 asked the court to set them free because their case is fabricated one.

In cross examination DW1 stated that, the car belongs to him and nothing was found therein thus why he didn't sign anywhere in those things which they say were found in the car. He also said that, he started business with 2nd

accused 2007. Then he said that, nothing was found in his home except four printers. He said that, he has no license from COSOTA but his business license was taken by police. He added further that, he has good relationship with Steps Entertainment and that PW1 & PW2 are the ones who sold or give CDs in credit for them to sale. Lastly he said that, during statement taking he did not confess and he was not given a chance to give enough explanation. In re examination DW1 stated that he has no conflict with Steps. That he is the person who uses his car and lastly what were found at his home was printers only.

RIGOBERT MASAWA who is the 2nd accused testified as DW2. After taking oath he stated that, he is a business man selling clothes at Kinondoni but also deals with CD business. He said that, on 7/8/2012 he went to Kariakoo to the shop which he has shares. He said around 9hrs certain police office came, beaten him and forced to enter inside the shop claiming that , there were Fake CDs, later on PW2 and Omary came and said that, they have been instructed by Steps officials to conduct search for fake CDs. He said that, they should call ten cell leader who came while search was going on. They said that, all CDs with Steps stickers were fake. He said that, CDs were parked in the box and put to DW1's car to central police station. Then he said that, police conducted search in their premises as well. He said that, in his premise nothing was found but 4 printers were found in the premises of DW1. Thereafter they turned back to police station until next day when Afande Omary recorded his statement. He said that, caution statement was taken around 13hrs-14hrs. He recorded the statement and bailed out on the condition of reporting to the police station in

which they reported from 2012 to 2013. They were told that, the case delayed because their file was at DDP office and some CD samples were taken to the ID department of police. He said that, empty CDs and CD covers are what were found in the shop.

DW2 continued to say that, Steps officials and PW6 are the ones which identified original and fake CD. He said that at the police station they were told that, artists identified which CDs are original and which are fake but no artist who was summoned to testify in court. He said that Identification Bureau of the police was the proper forum to conduct identification. He also said that, PW2 testified that CDs were sent for identification but no report was ever released. No person summoned to witness that they distributed him fake CDs, he said distribution is normally conducted by companies and they had no company. Lastly he said that, Stickers was being held by PW3 from Steps and was the one who planted them in DW1's house. He asked the court to set him free.

In cross examination DW2 stated that, he started conducting business with DW1 in 2010, he increased the capital but DW1 was the one who was paying government taxes and who was mostly dealing with the business. He said that, nothing was found in the car, neither nor search was conducted in the car thus why they did not sign attached document stating that some properties were found in the car. Lastly he said that the car belongs to DW1. In re-examination DW2 stated, he didn't know why police did not tell them to sign the first page of search report conducted in the car. He asked the court not to consider exhibit

P2 because it is a fabricated one and the year written on the report is not correct one.

Having recorded evidence adduced in court by both parties, It is opportune and pertinent to analyze and evaluate evidences adduced in court in the line issues set herein below;

1. *Whether accused persons conspired to commit an offence as alleged or not*
2. *Whether accused person unlawfully reproduced copies of audio visual film without authorization of copyright owner.*
3. *Whether accused persons unlawful distributed fake copies of audio-visual films contrary to the law or not*

The first issue states that, whether accused persons conspired to commit an offence as alleged or not. The Concise Oxford Dictionary-10th Edition defines the word conspiracy to mean a secret plan by a group to do something unlawful or harmful. Also The Concise Oxford Dictionary-10th Edition defines the word conspires to mean secret plans jointly to commit an unlawful or harmful act. Other jurisdictions like the United States define conspiracy as an agreement between two or more persons to commit a crime or to accomplish a legal end through illegal actions (the letric law library). Section 285 of the Penal Code Cap 16 provides that,

Any person who conspires with another to commit an offence punishable with imprisonment for the term not less than three years or to do any act in any part of the world which if done in Tanzania would be an offence under the laws in force in the place where it is proposed to be done commit an offence.

Now from the meaning shown above in connection with the provision cited, it is mandatory for prosecution to prove beyond reasonable doubts that; two or more persons in some way or manner, came to a mutual understanding to try to accomplish a common and unlawful act punishable with imprisonment or to prove that offenders committed an act elsewhere in the word but which in Tanzania is an offence punishable by imprisonment. No evidence adduced in court to prove that accused persons did conspires to commit an offence as alleged. No evidence adduced to show that accused persons jointly agreed to commit an offence before when they were arrested. In the absence of such evidence, I am persuaded to believe that accused persons did not conspire to commit an offence.

Second issue sates that, whether accused person unlawfully reproduced copies of audio-visual film without authorization of copyright owner. Particulars of offence for count 2, 4, & 6 provides that, accused persons unlawful reproduced the film titled GLORY OF RAMADHANI, HATIA and NAKWENDA KWA MWANANGU without authorization of copyright owner. Now, section 4 of the Copyright and Neighboring Rights Act Cap 218 R:E of 2010 defines reproduction to mean,

"reproduction" means the making of one or more copies of a work or of a phonogram in any manner or form, including any sound or visual recording or any permanent or temporary storage of the work or phonogram in electronic form;

From the wording of the provision cited, it means there must be evidences adduced before the court showing the act of making/processing copies or visual recording any permanently or temporarily storage of the work in electric form. PW1, PW2 & PW3 testified in court that accused persons were found in possession of fake CDs. PW2 testified in court that, 1st accused was found in possession of scanner, printers, and stickers. His evidence was corroborated by exhibit P2, P3 & P4. Now is it possible to reproduce stored film in electronic form by using scanner, printer and stickers alone? Did they found accused person reproducing? The answers to these questions are clear. It is not possible to print, scan, copy, burn or records a CD without a computer with printing, scanning, copying, burning and recording programs. PW2 stated that, they did not find a computer and no one testified that they found it or found accused persons reproducing. Computer is defined under section 4 of Copyright and Neighbouring Rights (supra) as an electronic or similar device having information processing capabilities. It therefore believed that in order to make or record and store the work of art in an electronic form one must have several equipments to enable the act of making or processing and recording. One among those equipments is a computer. Therefore this court found accused persons not guilty for the counts of unlawful reproducing audio-visual CDs as alleged.

Now the third issue states that, whether accused persons unlawful distributed fake copies of audio-visual films contrary to the law or not. PW1 stated that, search was conducted inside the shop and in the car in the presence of ten cell leader. PW1 testified that copied films titled; HATIA,

MWALIMU NYERERE, NAKWENDA KWA MWANANGU, GLORY OF RAMADHANI, and other films belonging to other companies were found by police in the shop during the search. He also stated that, films named above and CDs yet to be parked were found in the car. Evidence of PW1 was corroborated by evidence of PW2 who testified that, they managed to find 378 different duplicated CDs in the shelves, 101 CDs which were in the box, 44 empty cover in black and two envelopes with printed paper having pictures which are used to be placed on top of the CD were found in the shop and three boxes of which one box had 100 CDs titled GLORY OF RAMADHAN, 2nd box with 100 CDs titled HATIA and third box had 100CDs titled NAKWENDA KWA MWANANGU, other 100 CDs titled GLORY OF RAMADHAN which were parked in into 2 shells each having 50 CDs, 2CDs titled MPENZI CHOCOLATE, empty covers and two envelopes with printed paper having pictures which are used to be placed on top of the CD were found in the shop. Evidence of PW2 was supported by Exhibit P1 which is the certificate of seizure signed by 2nd accused and PW5 who witnessed the seizure and exhibit P5 &6 which were properties listed in exhibit P1. PW3 testified in court that, all CDs which were found were not original because they were produced by water ink while original CDs were produced by oil ink. PW3 also testified that, if original CD is scratched, it will not be damaged but if fake CD is scratched, printed material will be removed. Exhibit P8 was tendered as an original CD. Evidence of PW3 was corroborated by evidence of PW6 who testified that, original CD is anti- scratch and water proof. It cannot be damaged by scratch or water. PW6 demonstrated the different between exhibit P5 and exhibit P8.

PW6 scratched exhibit P5 which is a fake CD and its cover was easily removed. PW6 demonstrated by applying the water on exhibit P8 but the upper layer did not go away but when he put water on the fake CDs (P5), they got damaged.

Now following the evidence of PW1, PW2, PW3, PW5, PW6 coupled with exhibit P1, P5, P6, & P6, I am satisfied that, accused persons are guilty for unlawful distributing audio-visual of copies of films titled GLORY OF RAMADHANI, HATIA & NAKWENDA KWA MWANANGU as stated in count 3, 5 & 7 contrary to section 9(1)(b) of the Copyright and Neighbouring Rights Act Cap 218 . Meanwhile in the absence of clear evidence as to conspiracy to commit an offence and unlawful reproduction of audio-visual films accused persons is not guilty of an offence stated in count 1, 2, 4, & 6.

Dated at DSM this 18th day of January 2016

Signed: Hon. A.A.Sachore(RM)
18/01/2016

Conviction:

1st and 2nd Accused persons are hereby convicted on the 3rd, 5th and 7th counts under section 42(1) (a) of the Copyright and Neighbouring Rights Act Cap 218.

Prevision conviction:

No record of previous conviction.

AP. Apart from the punishment under section 42 of the Copyright and Neighbouring Rights Act Cap 218, the state attorney made prayers under section 38 (1) of the

Copyright and Neighbouring Rights Act Cap 218, that the court to issue an order of destruction of the fake CD's and he made prayers under section 351(1)(a) of CPA that the car which was found carrying the fake CDs and printers be confiscated. In support of his prayers he cited the case of **DPP Vs Mikula Mandungu**, appeal case no. 47/1989 unreported. He then prayed for severe punishment to be imposed to accused due to the magnitude of copy right infringement which deprives artists from getting legal income and as it makes the government to lose the revenue.

Mitigation:

1st accused I am the first offender. I have family that depends on me. I have a wife and children all depend on me. Also I pray the motor vehicle which was attached by police to be returned because it is the one which helps me and family.

2nd accused I am the first offender.

Sentence:

There is no any proof before this court that the accused persons are habitual offenders. Also the mitigations by an accused(s) that they have families which depend on them and having regards to the nature of offences and accused(s) are convicted by this court and hereby punishes the 1st accused to pay fine to a tune of TZS 200,000/=for each count in default to serve one year imprisonment for 3rd, 5th and 7th counts. Also the 2nd accused person is punished to pay fine to a tune of TZS 200,000/= for each count in default to serve one year imprisonment for 3rd, 5th and 7th counts.

State attorney pray the motor vehicle to be confiscated but since 1st accused prayed for the same, not to be forfeit as it helps the family to get the needs and also having regards to the nature of the offence, the motor vehicle with registration number T608BWD SUZUKI ESCUDO be returned to the accused person forthwith. Since the punishment given to accused suffices, fake CDs should be destroyed other items which were attached like printer and scanner be returned to accused persons.

Dated at DSM this 18th day of January 2016

Signed: Hon. A.A.Sachore(RM)
18/01/2016

Judgment delivered this 18th day of January 2016 in the presence of state attorney mr awamu mbagwa and defence counsel mr mwakalasya.

Signed: Hon. A.A.Sachore(RM)
18/01/2016

Right of appeal full explained.

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DISTRICT ADMINISTRATOR
DAR ES SALAAM

Signed: Hon. A.A.Sachore(RM)
18/01/2016

Words 5,755