

**IN THE DISTRICT COURT OF ILALA**

**AT SAMORA AVENUE**

**CRIMINAL CASE NO** 814/2011  
~~487/2013~~

**REPUBLIC**

**VERSUS**

**AJAY AMARSH CHAVDA**

**JUDGMENT**

**BEFORE: F.E.HAULE**

Accused persons Ajay Amarsh chavda and Justine Paul Limonga stand charged with violation of copyright in 12(twelve) counts, that is unlawful reproduction, translation, adaption and distribution.

In the 1<sup>st</sup> to 4<sup>th</sup> counts, accused persons are charged with violation of copy right, that is unlawful reproduction, translation, adaption and distribution of copyrighted/artistic works in the form of audio visual film works titled AKELE HUM AKELE TUM without authorization or

consent of copyright owners namely; AAMIRI KHAN, MUNISHA KOIRALA and MASTER ADIL in contravention of section 9(1)(a), 9(1)(e), 9(1)(f), 9(1)(b) and 42(1)(a) of the copyright and Neighboring Right Act (Cap 218 R.E 2002) respectively.

In count 5<sup>th</sup> to 8<sup>th</sup> accused persons are indicated on charges of unlawful reproduction, translation, adaption and distribution of copyright/ artistic works in the form of visual-video film work titled SIRF TUM without authorization or consent of copyright owners namely SANJAY KAPOOR and PRIYA GILL. The violation is respectively in contravention of same provisions namely, sections 9(1)(a), 9(1)(e), 9(1)(f), 9(1)(b) and 42(1)(a) of the Copyrights and Neighboring Right Act, (Cap 218 R.E 2002)

Count 9<sup>th</sup> to 12<sup>th</sup> are unlawful reproduction, translation, adaptation and distribution of Copyright/artistic works in the form of visual-video film works titled TERE NAAM without authorization or consent of copyright owners namely, SALMAN KHAN BHOOMIKA CHAWLA, SACHIN KHEDEKARI and SAVITA PRASHUNE in violation of section

9(1)(a), 9(1)(e), 9(1)(f) and 9(1)(b) and 42(1)(a) of the Copyrights and Neighboring Right Act, (Cap 218 R.E 2002)

Accused persons pleaded not guilty on all twelve (12) counts, in reaction the prosecution called three witnesses and tendered a number of exhibits. Accused person is represented by Denial Msemwa while the republic is represented by Mutakyawa Principal State Attorney.

PW1 MAURINE FONDO, Legal officer of the Copyright Society of Tanzania (COSOTA) told the court that on 20/8/2009 in the afternoon hours, COSOTA in cooperation of police conducted anti-piracy raids and inspection in various areas in Buguruni and Karikoo within Ilala District in Dar es salaam region to find out pirates of copyrighted works who are doing reproduction, translation, adaptation and distribution of such works without authorization of copyright owners and requisite permits/certificates which are issued by COSOTA.

PW1 went on telling this court that in the course of the said operation they identified a shop at Kariakoo/Nyamwezi kipata street operating in the name of FAMOUS VIDEO in which they found a number of

compact disks in the form of VCD-video Compact Disk, DVD- Digital Versatile Disks and VHS- Video Home/ Housing system/set. In the said shop they found 1<sup>st</sup> Accused who introduced to PW1, Mr. Justus Mkinga (COSOTA Chief Executive officer) and police officer E.103 D/SSGT NYAGEA (PW2) that he (1<sup>st</sup> accused) was the owner of the shop.

It was PW1's further testimony that when she looked at those video, she realized that they had been translated in Swahili from Indian Language and that other works had no security features. In that regard he realized that those videos were fake. Then PW1 asked 1<sup>st</sup> accused whether he had requisite permits which allowed him to do translation, distribution, and reproduction of those artistic works. The accused failed to show in any of the permits/license instead he showed a license relating to PUBLIC PERFORMANCE, the license which did not entitle the accused to do translation, distribution, reproduction and adaptation of such works since public performance permit allows the holder only to do films show and music video library. They counted the copied rights in the company of

the 1<sup>st</sup> accused and recorded the number of faked works as follows  
VHS=4075, DVD=932 and VCD =185.

Also empty 870 VHS and reject 33 VHS were found. PW1 found that most of the pirated works were Indian works. The 1<sup>st</sup> accused was given 60 days by COSOTA to provide evidence regarding the legality of those works he failed to give any proof.

PW1 went on telling the court that while still there at the shop two people come there who introduced themselves as JUSTINE PAUL LIMONGA (2<sup>nd</sup> accused) and one LUFUFU (deceased). The 2<sup>nd</sup> accused and his fellow talked to PW1, PW2 and others in the team of inspection by altering the followings words; **“mnapeleka wapi hizo kazi zetu tunazo zitafsiri?”**

Those items found in the said shop were after wards seized and their descriptions were accordingly posited into seizure certificate. The seizure was also witnessed by the 1<sup>st</sup> accused lawyer and one REGINA SHIRIMA. The seizure certificate was produced in court as evidence by

PW2 and marked as exhibits "P12". Those seized items were kept by COSOTA under custody of PW1.

PW1 stated further that on the strength of section 3(6) (a) of the Copy Right and Neighboring Right Act,( CAP 218 R.E 2002) which provides for National Treatment Principle that Act shall be applicable to the works done in country and from outside the country which requires foreign artists to be protected as it does for domestic authors. And the spirit of the Reciprocal Agreement (exhibit P14) that was entered between COSOTA and Copyright society of India namely, The Indian Performing Rights Society Limited (IPRS) in the implementation of the Act, she requested IPRS if it could identify those works seized so that COSOTA could proceed with other legal measures pertaining to the said violation.

IPRS identified those works of its members which were found and seized from the shop of the 1<sup>st</sup> accused whereby it sent to COSOTA a report known as cue sheets (exhibit P1) Comprising names of its member, authors/artists copyright owner of the respective work,

registration number, participants in the film, royalties that are payable by each respective author in the list etc.

The cue contains a large number of authors and their details. The three (3) CD'S on which the charges against accused persons are pegged are listed in the cue sheets (exhibit P1) as follows; AKELE HUM AKELE TUM is listed in items comprised in alphabet "T". Apart from the Cue sheets, IPRS also sent to COSOTA three original CD'S of those works to wit; AKELE HUM AKELE TUM; SIRF TUM and TERE NAAM for making comparative analysis against those fake CD'S which were seized from the shop of the accused person. Those three (3) original CDS which IPRS sent to COSOTA and covering letter thereto were produced in evidence and collectively marked exhibit P2.

It was stated further by PW1 that on 25/08/2009, the 1<sup>st</sup> accused wrote a letter to COSOTA praying the returns of the works taken away from his shop so that he could delete the copyright materials. He further confessed and promised not to re-commit the offence. The said letter was admitted as exhibit "P3". PW1 told the court further that on

22/10/2010 the 1<sup>st</sup> accused wrote another letter to COSOTA requesting to be given exclusive rights to translate Indian, English, Chinese, and France etc. audio Visual works. This letter was admitted in evidence as exhibit "P4".

PW1 moved this court to the premise of COSOTA offices situated in Mikocheni where those seized works were being kept to have them produced in evidence. On counting all the seized works it was found that; 4074 VHS had remained which was marked as exhibit P5 one empty VHS which was marked as exhibit P6, 912 empty DVD which were admitted as exhibit P7, 870 empty VHS admitted as exhibit P8, 33 VHS exhibit P9, 33 empty DVD exhibit P10 and 16 VCD exhibit P11.

PW1 gave explanation regarding variance in terms of number of seized pirated works in exhibit P12 and number of works that were produced in the evidence. She explained that at the time of seizure in 2009 those works were kept at COSOTA offices at Kitega Uchumi Building along Samora street on the city Centre but in January , 2014 COSOTA shifted

its offices to Chato street, Mikocheni within Kiniondoni District. Also this case had earlier been instituted at Kisutu RM's court where the items were regularly being moved to that court about five times until when the case was withdrawn from Kisutu and instituted in this court. So, considering the period of about six (6) years this matter has been pending the possibility of those exhibits to get damaged, destroyed and some lost in the process was very high and therefore resulting to the difference occasioned.

In proving the fakeness of those seized works from the shop of the accused, PW1 demonstrated in detail both external and internal features by playing each of the original CD sent by IPRS (exhibit P2) to show the dissimilarities between the pirated works and those original works. For instance on the CD of SIRF TUM, she showed the court the picture on outer cover of the pirated work that had no clarity unlike the original work. But also the cover of the fake CD there are written swahili version IMETAFSIRIWA KISWAHILI "SWAHILI VERSION" and that INAPATIKANA MTAA WA NYAMWEZI/KIPATA which is the

physical address of the business of the accused, mobile number of the 1<sup>st</sup> accused namely, 0715519444.

The original CD has a copyright notice that it is not allowed to copy, distribute that is strictly prohibited CD'S and that the original has a clear voice unlike the fake one, in the fake film there were phrase moving across reading " KAZI NZURI SANA, TUNAMSHUKURU MOLA, MBAGALA KWA MANGAYA, IMEANDIKWA MANENO YA KISWAHILI , INAPATIKANA KWA AJAY CHAVDA & JUMA KHANI."

That on the fake CD titled "AKELE HUM AKELE TUM", when it was played the film reflected the following swahili phrases; IMETAFSIRIWA KISWAHILI INAPATIKANA MTAA WA NYAMWEZI KIPATA 0715-519444; INAPATIKA KWA LIMONGA JUSTINE LIMONGA, MBAGALA KWA MANGAYA, AU PIGA SIMU 0713-604578. All this particulars including the mobile phone number were admitted by 2<sup>nd</sup> accused to belong to him.

With regard to the fake CD titled "TERE NAAM" the film reflected those swahili phrases; "INAPATIKANA KWA AJAY CHAVDA, NYAMWEZI/ KIPATA, KARIAKOO, DAR ES SALAAM, AJAY CHAVDA 0715-519 444, the shop of the accused.

The original CD has a copyright notice that it is not allowed to copy, distribute that is strictly prohibited PW1 prayed both original and fake.

However, on cross examination by the defense counsel PW1 repeated similar accounts as stated in examination in chief. But on the issue of names of the accused persons. For 1<sup>st</sup> accused she stated that his name is Ajay Amash Chavda as contained in the charge sheet. The pirated works also mentioned the name Ajah chavda. With regard to the 2<sup>nd</sup> accused in the charge sheet is named Justine Paul Limonga while in pirated works the name appears is Limonga Justine Limonga

That TERE NAAM from India was DVD but from the famous video shop they seized VHS. The pirated work was translated by JUMA KHAN and AJAY CHAVDA distributed at famous video shop.

PW2- E. 103 &/55 CET Nyagea testified that on 20/08/2006 he was along within COSOTA officials in operation of arresting artistic works which were pirated. They went up to Kariakoo and Kipata street where they managed to seize various pirated works CD'S, VHS in a shop known as "FAMOUS VIDEO " in the said shop they found one lady and one man who introduced to them in the name of AJAY CHAVDA and the owner of the shop.

PW2 stated further that when they introduced to AJAY CHAVDA their intention of going to his shop, he needed the presence of his advocate during seizure. Thus he was allowed to call his lawyer Reginald Shirima who arrived and witnessed the search and seizure of pirated works. In cooperation with the owner of the shop they managed to seize 4075 VHS, 870 empty, 34 reject, 932 DVD and 185 VCD.

It was PW2's further testimony that the said works were recorded in the search order witnessed by Reginald Shirima, owner of the shop AJAY CHAVDA and the lady who was in the shop. PW2 identified 1<sup>st</sup> accused in this case as AJAY CHAVDA. PW2 went on to state that when they

continued with search, the 2<sup>nd</sup> accused person arrived at the shop, 1<sup>st</sup> accused introduced to him as one of the owners of the shop.

PW2 identified seizure certificate before the court and tendered it as evidence, the court admitted and marked as an exhibit P12.

PW2 also stated that apart from searching and seizing pirated works from famous video shop, he interrogated the 1<sup>st</sup> accused and wrote his caution statement in the presence of his advocate Reginald Shirima. He identified it before the court and tendered it as exhibit this court admitted and marked as an exhibit P13. PW2 also moved the court at COSOTA'S office in Mikocheni where he identified all pirated works seized from famous video shop that appears in seizure certificate.

However, on cross examination by the defense counsel, he responded that the 1<sup>st</sup> accused statement proves that he is the owner of famous video shop. But he did not engage in inspection of documents relating to the ownership of the shop. The seized works were handed to COSOTA but they did not put distinguishing marks as works were distinguishable

and all are identical. All items contains mobile number of the accused persons.

Regarding the involvement of 2<sup>nd</sup> accused person in commission of the offence he stated that the 2<sup>nd</sup> accused in seized work was revealed when he reached at the shop and asked them as to where they are sending their works. The 1<sup>st</sup> accused also mentioned him in his caution statement that he purchases the works from him that he was involved in distribution.

PW3 Doreen Antony Sinare testified under oath that is working at COSOTA as Chief Executive Officer and Copyright Administrator her responsibilities being to implement and supervise all society activities, supervise her subordinates.

PW3 went on to state that the Copyright and Neighboring Act gives them the mandate to protect outside works. The agreement on Trade and Prevented Aspect of Intellectual property Rights (TPIPR) talks of National Treatment to copyright works inside and outside the country also BONE CONVENTION on protection of Artistic works in which Tanzania is a member as we have ratified it.

She also stated that Tanzania has signed an agreement with Zanzibar copyright society of Zanzibar (COSOZA) Music Copyright Society of Kenya (MCSK), Copyright Society of Nigeria (COSON), Copyright Society of Malawi (COSOMA), India Performing Right Society (IPRS) etc.

It was PW3's further testimony that COSOTA entered into contract with IPRS in 2007 in protecting and promoting Copyright works. PW3 identified the contract before the court and produced it as evidence the court admitted the contract and its covering letter as exhibit P14. She added that the contract between COSOTA and IPRS was signed on 23/10/2007 by (COSOTA) Tanzania and by IPRS India on 10/12/2007.

Regarding this case PW3 stated that she is aware of the famous video shop located at Kariakoo dealing with selling and distribution of videos. Famous video shop applied at COSOTA for Public performance License that is showing the video to the customer before he or she purchases in 2007. In 2010 it was registered as member and in 2013 they registered various Tanzanian works.

PW3 also explained on the procedure of application for a person who was to translate, reproduce, distribute and adopt others work. That person has to consult the owner of the work or supervisor in Tanzania COSOTA act as a bridge. And artist has to be paid. It was PW3's further testimony that in 2009 COSOTA officials went at famous video shop owned by Chavda. They found pirated works in his shop, thus COSOTA officials in collaboration with the police seized those works, arrested accused persons and charged them. Presently many of the pirated works were from India. They knew that they were translated in Swahili. The rest of PW3's evidence regarding the letters from famous video shop exhibits P3 and P4

However on cross examination by the defence counsel she responded that under agreement on Trade Related Aspect of Intellectual Property (TRIPS) they have the duty to protect artistic works of other countries even if they did not sign contract

That was marked to be the end of the prosecution case it was ruled out that the prema facie case was been established against both accused

persons on all twelve (12) counts thus they defended their case as hereunder:

DW1 Ajay Amash Chavda testified upon affirmation that before being charged with this case he was working at Kipata and Nyamwezi street selling video's at Kariakoo in famous video shop. These were CD, DVD, VHS and VCD. The owner of the shop was Reshma Ajay Chavda he was only working for him. He had license in the name of Reshma Ajay Chavda, he also had permit from COSOTA. The same was registered with BRELA in his name he got certificate of Incorporation and certificate of Registration in the name of Reshma Ajah Chavda and famous video shop.

He went on defending his case that he was not involved in any way in reproduction, translation, and adaptation of the said artistic works as he stand charged. He also said that he was not the distributor as he was only an employee.

Regarding the 2<sup>nd</sup> accused Justine Limonga he said that he knew him in 2008 as he was his customer who was purchasing videos in his shop. He

also stated that reproduction is duplication this can only be done by using a machine. But he was not found with any machine used to reproduce those works. His shop and home was searched but no machine was found. The prosecution also failed to mention the machines used to reproduce the said videos

It was DW1's further defence that there is no any evidence to prove that the voice for translation is his. The translator according to the video played and shown before the court, mentioned his name and said that he can be found at Mbagala kwa Mangaya and one at Vingunguti, phone number were also mentioned one of them has already passed away.

He concluded that the evidence adduced by the prosecution against him is all lies. Thus he prayed to be acquitted and set free.

However, on cross examination by the public prosecutor he answered that he had no documents to prove that famous video shop is owned by Reshma Ajay Chavda, who is his relative. He was the chief supervisor, thus he had a role of receiving goods from the translators who translates into kiswahili language then selling. He was receiving from Lufufu

Mkandala, Juma Kani @Bija Mark. Lufufu was living at vingunguti while Juma Kani was living at Mbagala kwa Mangaya , Justine Limonga being among them but is not 2<sup>nd</sup> accused.

When he was cross examined in relation with seizure certificate and the caution statement he stated that the artistic works contained in seizure certificate are the works that were found in famous video shop. His phone number since that time is 0715 519444 but he could not re-call that of the 2<sup>nd</sup> accused.

As regards to his caution statement he stated that page two of the caution statement he stated he owns a famous video shop and that he had license from COSOTA. He also stated that Justine Limonga was the supplier.

He also said that the video played by PW1 during hearing of this case, he heard Akele hum Akele tum video, the mobile phone number contained therein was 0715-519 444 which is his. The phone number mentioned therein is 0713-604578 is that of Limonga Justine Limonga who is not the 2<sup>nd</sup> accused in this case. In further cross examination he stated that the phone number mentioned above is not different from the

number mentioned in his caution statement but he refused to answer in relation to Limonga Justine Limonga.

Regarding the signature contained in the letter exhibit P3, DW1 said that it is not his as it does not resemble with the signature contained in his caution statement. The phone number contained in the said letter is his but he does not know the letter. He also denied exhibit P4 which is the letter from famous video mentioned the name of the shop as famous video. The video he was purchasing were in Indian Language.

DW2 went on to state that the video play shows his number, but the name Limonga Justine Limonga is not his, his name is Justine Paul Limonga as contained in a charge sheet. He produced the letter of employment with people Media Telecommunication which shows his name as Justin P. Limonga

He also said that before he was arrested, he received a phone call from police officer Matoke asking him to assist them as to where the translated videos can be found in relation to the videos arrested in

famous video shop. Later on he was told to go at central police, where video shop

In re -examination he stated that exhibit P3 is the letter from Reshma Ajah Chavda addressed to chief executive officer of COSOTA. The letter was signed by Reshma Ajah Chavda thus he cannot answer anything as he is not the author.

DW2- Justine Paul Limonga testified under oath that he has nothing to do with the allegation posed against him as he did nothing in relation to what has been stated in the charge sheet. He stated further that he knew the 1<sup>st</sup> accused before the date he was arraigned herein court as he was the customer in his shop purchasing video, the 1<sup>st</sup> accused being the seller. He had no any other relationship with the 1<sup>st</sup> accused apart from being his customer. He reached there he was handed to another police who had a written statement showing that he committed the offences together with Ajay Chavda. But he denied the said statement he was forced to sign the said statement which he signed. Later on he was

arraigned at Kisumu RM's court. He prayed to be acquitted as he did not commit the alleged offence.

On cross examination by the public prosecutor he responded that the police required him to explain as to where the works can be found due to the caution statement of Ajay Chavda, 1<sup>st</sup> accused, may be 1<sup>st</sup> accused mentioned him mistakenly but 0713 604578 is his mobile phone number. The 1<sup>st</sup> accused lied before the police by mentioning his name and mobile phone number.

He went on stating that on 20/08/2009 he did not go at the shop Famous video when the artistic works were seized. He heard PW1 telling the court that he went at the shop and asked them as to where they are sending their works which they were translating. But what PW1 stated was all lies and all what 1<sup>st</sup> accused talked against him was lies.

On further cross-examination he stated that the 1<sup>st</sup> accused mentioned his name as one of the distributor of artistic works in his defence. But he had no any grudges with him. PW1 and PW2 also testified lies against him.

He also said that he heard the video play of AKELE HUM AKELE TUM. He also saw the advertisement in relation to where, the said video can be found, it was at Mbagala kwa Mangaya where he was also living but the name Limonga Justine Limonga is not his though the phone is his.

Having gone through the charge sheet and evidence adduced by both parties I have endeavoured to raise three issues as points for determination;

1. Whether both accused did unlawful reproduce, translate, adapt and distribute copyrighted/artistic works in the form of audio visual film works titled AKELE HUM AKELE TUM without consent of copyright owners AAMIR KHAN, MANISHA KOIRALA and MASTER ADIL.
2. Whether both accused persons did unlawful reproduce, translate, adapt and distribute copyrighted artistic works in the form of visual-video film works titled SIRF TUM without consent of copyright owners namely; SANJAY KAPOOR and PRIYA GILL.

3. Whether both accused persons did unlawful reproduce, translate, adopt and distribute the copyrighted/ artistic works in the form of visual video film works titled TERE NAAM without consent of copyright owners namely; SALMAN KHAN, BHOO MIKA CHAWLA SACHIN KHADEKAR and SAVITA PRASHUNE.

All three issues will be determined jointly, it is clear from the testimony of PW1 as Legal officer of the copyright society of Tanzania (COSOTA) that on 20/08/2009 in the afternoon hours they were inspecting in various areas including Kariakoo when they managed to identify the shop located at Nyamwezi Kipata Street operating in the name of FAMOUS VIDEO that had pirated works. That works were reproduced, translated, adapted and distributed. Those were Indian works in the form of VHS=4075, DVD 932, VCD=185 all works were identified and counted by PW1 before the court, the 1<sup>st</sup> accused person introduced to be the owner of the shop.

Thereafter COSOTA officials who worked in cooperation with the police required him to produce documents or requisite permits or

authorization to reproduce, translate, adopt and distribute those works but he had no permit. Thus those works were seized and search order was prepared. This was produced by PW2, D/SSGT Nyagea.

Apart from that the 1<sup>st</sup> accused in his caution statement written by PW2 in the presence of his lawyer Reginald Shirima stated that Famous video in which pirated works were seized is his but he had requisite permits to sell DVD, VCD, and VHS.

But in his defence told the court that the shop called FAMOUS VIDEO from which pirated works were seized is not his alleging that the same belongs to one RESHMA AJAY CHAVDA. But he failed to produce any document to prove that the said shop belongs to the said RESHMA, he also failed to call the said RESHMA to testify to that effect.

In the case of MOHAMED HARUNA @MTUPENI AND ANOTHER V REPUBLIC Criminal Appeal No. 259/2007 (unreported) held that; the very best of witnesses in any Criminal trial is an accused person who freely confesses his guilty.

I agree with the Public Prosecutors submission that the said confession was not objected by the defence, consequently the court admitted it as exhibit 'P13'.

The fact that exhibit P3 which is the letter written by FAMOUS VIDEO SHOP to COSOTA was signed by Reshma Chavda does not override the oral confession made by the 1<sup>st</sup> accused on the date works were seized then later on in his written caution statement that the shop is his. Exhibit 'P3' proves that they had no requisite permits or authorization to reproduce, translate, adapt and distribute copyrighted artistic works.

Regarding the second accused PW1 told the court that while in the shop FAMOUS VIDEO there came two people who introduced themselves as JUSTINE PAUL LIMONGA and one LUFUFU (who is now deceased). These two people talked to PW1, PW2 and other colleagues in the team of inspection by uttering the following words 'mnapeleka wapi hizi kazi zetu tunazo zitafsiri'

Apart from that the 1<sup>st</sup> accused confessed that pirated works seized from his shop were translated into kiswahili and purchases it from

MKANDALA LUFUFU with mobile number 0754-821169 and JUSTINE LIMONGA with mobile number 0713-604578.

This has been reflected on the fake CD titled AKELE HUM AKELE TUM; when it was played the film reflected the following Swahili phrases "IMETAFSIRIWA KISWAHILI INAPATIKANA MTAA WA NYAMWEZI KIPATA 0715-519444". "INAPATIKANA KWA LIMONGA JUSTINE LIMONGA MBAGALA KWA MANGAYA, AU PIGA SIMU 0713-604578".

However, 2<sup>nd</sup> accused in his defense denied to have committed the alleged offenses. And he also disputed the evidence of PWI that he went at the shop on 20/08/2009 this was on cross examination by the public prosecutor.

He also admitted during cross examination that the video play of AKELE HUM AKELE TUM there was advertisement on where the said video can be found, and was Mbagala Kwa Mngaya where he was also living but the name Limonga Justine Limonga is not his. While disputing the names, he admitted that the phone number contained

therein is his. The very same number mentioned by the first accused in his caution statement is that of JUSTINE LIMONGA. Therefore accused person defense has not filled gaps in prosecution evidence which is strong.

The prosecution PW3, PW1 has also proved that they have the duty to protect Indian Copyrighted/artistic works due to the agreement entered between COPYRIGHTED SOCIETY OF TANZANIA (COSOTA) and the INDIAN PERFORMING RIGHTS SOCIETY LIMITED (IPRS). They also received original works from IPRS that is AKELE HUM AKELE TUM, SIRF TUM and TERE NAAM which were played by PW1 showing internal and external features. PW1 also played the fake video before the court. The IPRS sent to COSOTA cue sheets containing the names of video and the names of artists who own that video

This court has been satisfied that COSOTA played their role as required by the law and per agreement entered with IPRS.

Furthermore, the evidence adduced by the prosecution shows that the 1<sup>st</sup> accused was the distributor of pirated artistic works translated into

swahili without authorization from the owner, thus he committed three offences as reflected in the charge sheet that he distributed artistic work titled AKELE HUM AKELE TUM without authorization of the said AAMIRI KHAN, MANISHA KOIRALA and MASTER ADILI.

Secondly, distribution of SIRF TUM artistic work without authorization of SANJAY KAPOOR and PRIYA GILL.

Thirdly distribution of the artistic work titled TERE NAAM without authorization of SALMAN KHAN, BHOMIKA CHAWLA, SACHIN KHEDEKAR and SAVITA PRASHUNE.

The rest offences were committed by the 2<sup>nd</sup> accused that is reproduction, translation and adaptation as well as distribution. From the foregoing reasons, I hereby convict 1<sup>st</sup> accused for 5<sup>th</sup>, 8<sup>th</sup> and 12<sup>th</sup> counts and the 2<sup>nd</sup> accused for 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, and 11<sup>th</sup> counts.

Signed: F.E.Haule-RM

27/04/2016

PP: We have no previous conviction records for the accused persons. But for these offences, I pray that accused persons be punished accordingly so as to be lesson to them and others who reproduces, translates, adapt and distributes other artistic works without authorization.

I pray for this court to involve section 42(1) (a) of the Copy Right and Neighboring Act, and on disposal of pirated works. Section 38 (1) of the Copyright and Neighboring Act.

**Mitigation:-**

1<sup>st</sup> accused – I pray for leniency as I am as I am the 1<sup>st</sup> offender, I have a family and my children are still young, my old parents depends on me.

2<sup>nd</sup> accused- Your honour, I pray for leniency as I am the 1<sup>st</sup> offender and I have the family that depends on me. I am a government employee any sentence that is stiff it may cost my work.

**Sentence:-**

In consideration of mitigation factors and the nature of the offence I hereby sentence:

1. First accused to pay a fine of Tshs 500,000/= for each count that 5<sup>th</sup>, 8<sup>th</sup>, and 12 counts or three years jail imprisonment on default.
2. Second accused to pay fine of Tshs 500,000/= for each counts that is, 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, or three years Jail imprisonment on default.
3. In case of default sentence shall be served consecutively or order accordingly
4. In respect of seized works all must be destructed by COSOTA under court supervision. I order accordingly.

Signed: F. E.Haule-RM

27/04/2016

Judgment delivered this 27<sup>th</sup> day of April, 2016 in the presence of both parties.

Signed: F. E.Haule-RM

27/04/2016



RESIDENT MAGISTRATE  
DISTRICT COURT ILALA  
DAR ES SALAAM

16/08/2017