THE JUDICIARY OF TANZANIA

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA AT DAR ES SALAAM

(CORAM: HON. NDUNGURU, J)

CRIMINAL SESSION NO. 000019605 OF 2025

REPUBLIC ..... COMPLAINANT / APPELLANT / APPLICANT

VERSUS

TUNDU ANTIPHAS LISSU ..... RESPONDENT / DEFENDANT

JUDGMENT

NDUNGURU, J

Tundu Antiphas Lissu (the accused) stands charged with the offence of Treason, contrary to Section 39(2)(d) of the Penal Code [Cap. 16 R.E. 2022] (now R.E. 2023) (hereinafter “the Penal Code”).

The prosecution case tends to show that the accused on 3rd day of April, 2025, within Kinondoni District in Dar es Salaam Region, being under allegiance to the United Republic of Tanzania, while in the United Republic of Tanzania, formed an intention to instigate the public to effect the obstruction of the 2025 General election, for the purpose of intimidating the executive of the United Republic of the Tanzania and manifested such intention by his deed of uttering and publishing the following words, to wit; *"...wanasema kitu kimoja*

sahihi hapa, wanasema hivi, msimamo huu unaashiria uasi ni kweli ni kweli kwa sababu tunasema tutazuia uchaguzi, tutahamasisha uasi, hiyo ndiyo namna ya kupata mabadiliko... kwa hiyo tunaenda kukinukisha,... sana sana huu uchaguzi tutauvuruga, tutauvuruga huu uchaguzi kwa sababu tunaenda kukinukisha vibaya sana..." The accused denied the charge at the commencement of the trial.

To prove the case against the accused person, the prosecution, led by Mr. Renatus Mkude and Ms. Ajuaye Zegeli, Principal State Attorneys, assisted by Mr. Nassoro Katuga, Principal State Attorney, Mr. Job Mrema, Principal State Attorney, Mr. Ignas Mwinuka, Principal State Attorney, Mr. Tawabu Issa, Senior State Attorney, Mr. Cathbert Mbilingi, State Attorney, and Ms. Winniwa Kassala, State Attorney, called seventeen (17) witnesses. They are, ACP George Wilbard Bagyemu (PW1), Inspector John Kaaya (PW2), Inspector Samwel Elibariki Kaaya (PW3), P5 (PW4), P6 (PW5), H3923 D/C CPL Michael (PW6), P2 (PW7), P8 (PW8), PF18544 ASP Geofrey Agrey Lutufye (PW9), P4 (PW10), P7 (PW11), H937 D/CPL Vicent (PW12), P3 (PW13), P9 (PW14), G.9304 D/CPL Amani (PW15), ACP Amini Mahamba (PW16), and P (PW17). Some of them were protected witnesses.

The accused defended himself (unrepresented) and called four witnesses, namely John John Mnyika (DW2), Amani Sam Golugwa (DW3), Brenda Rupia (DW4), and John Wegesa Heche (DW5). The accused also

relied on the previous statements tendered by PW2, PW3, PW4, PW5, PW6, PW7, PW8, PW9, PW10, PW11, PW12, PW13, PW14, PW15, PW16, and PW17 as Exhibits D1 to D16.

The following is the prosecution's evidence in support of the charge.

ACP George Wilbard Bagyemu (PW1) testified before this court that on 4 April 2025, while serving as Acting Zonal Crimes Officer (Ag. ZCO) Dar es Salaam, he was shown a video clip on Jambo TV YouTube channel by PW2. The clip featured the accused speaking about the 2025 election. He identified particular statements in the clip, especially: "*Inaashiria uasi. Ni kweli. Tunaenda kuzuia uchaguzi. Tunaenda kuhamasisha uasi. Kukinukisha sana sana. Kuvuruga kweli kweli. Kukinukisha vibaya sana."* In essence, the witness understood the accused to be saying that he would promote rebellion, prevent the election, and cause serious disruption.

The witness said these statements appeared to contain criminal elements. He therefore ordered the opening of a preliminary inquiry (PI) file, initially to establish whether the video was genuine and to establish whether Jambo TV had actually recorded and published it.

On 6 April 2025, the witness contacted the head of Jambo TV, who confirmed that the video clip was genuine and had been recorded by a Jambo TV employee, P (PW17). The witness subsequently learned that P's statement

had been recorded and that the memory card containing the recording had been recovered.

He further testified that, on 7 April 2025, he instructed PW2 to download the Jambo TV video clip for forensic examination. The downloaded material was thereafter placed in the exhibit keeper's custody. The witness also received the original memory card and related documentation from the investigators. Based on these steps, he concluded that the video clip had neither been manufactured nor fabricated.

He testified that, on 8 April 2025, after viewing the entire approximately three-hour Jambo TV video clip, he directed that a separate file concerning the alleged offence of treason be opened under reference number CDS/IR/727/2025, alongside another file relating to the publication of false information.

It was PW1’s testimony that the accused’s statements were treasonous because they demonstrated an intention to intimidate the Executive by opposing the enforcement of the laws governing the General election. He specifically relied on the accused’s alleged intention to promote rebellion, prevent the General election, and cause serious disruption. On that basis, the witness concluded that the accused had committed an offence under section 39(2)(d) of the Penal Code.



The Court was told that the accused published the statement by inviting journalists to the meeting and making the statements in their presence, thereby causing them to be broadcast through Jambo TV and making his alleged intention known to Tanzanians and others through social media platforms.

The witness testified that he was able to identify the person appearing in the video as Tundu Lissu based, among other things, on his physical appearance, the khaki-coloured CHADEMA uniform outfit he was wearing, the national flag displayed behind him, and the words he allegedly uttered.

The witness further told the Court that, after the accused was arrested in Mbinga and brought to Dar es Salaam, he attempted to record the accused's cautioned statement. He warned the accused that he was facing a charge of treason under section 39(2)(d) of the Penal Code and informed him of his legal rights. According to the witness, the accused ultimately declined to give a substantive statement and wrote: *"maelezo yangu nitayatoa mahakamani."*

Inspector John Kaaya (PW2) testified that on 4 April 2025, while on duty conducting online patrols, he accessed YouTube and came across a video published on the Jambo TV channel titled *"Tundu Lissu uso kwa uso na watia nia majimboni. No reforms, no election."* He watched the video and identified statements by the accused which, in his view, contained elements of criminality.

In particular, the witness relied on statements attributed to the accused concerning preventing the election, promoting rebellion and causing serious disruption, including the words that the position *"no reforms, no election"* signified rebellion because they had said they would prevent the election and *"tutakinukisha sana sana"* (cause serious disruption). The witness interpreted these statements as demonstrating an intention to obstruct the conduct of an election and intimidate the Executive, which he regarded as the principal authority responsible for enforcing the law and maintaining peace and security.

The witness also referred to statements allegedly made by the accused concerning the courts and judges, including that courts were inaccessible and that many judges were members or supporters of CCM. He considered these statements criminal because, in his view, they falsely portrayed the courts as incapable of dispensing justice and were intended to intimidate the Executive.

PW2 testified further that after viewing the video, the witness recorded the relevant statements, the Jambo TV page and the link to the video in his police notebook. He reported the matter to the head of the Cybercrime/online patrol unit and was subsequently directed to report it to PW1. He showed PW1 the video on his smartphone, including the portions he considered criminal.

On 7 April 2025, the witness was instructed to download the video from Jambo TV. Soon after, he prepared an 8GB KIOXIA flash disk, scanned and formatted it, downloaded the video onto it, encrypted it with a password, and

labelled it “DM.” According to him, the video had been published on 3 April 2025, and its viewers had increased to approximately 52,000. He handed the flash disk and exhibit label to the exhibit keeper, recorded his witness statement, and the exhibit was entered into the exhibit register.

On 8 April 2025, the witness was asked by an investigator to provide the password used to encrypt the flash disk. He recorded the password in the investigator's police notebook.

The witness further identified Tundu Antipas Lissu as the speaker in the video, relying on his appearance, his khaki combat-style clothing, the national flags in the background and the content of his speech. He also identified the downloaded video by its higher number of viewers and its visual features. He identified the physical exhibit by its “DM” marking, white colour, KIOXIA name and 8GB capacity.

Inspector Samwel Elibariki Kaaya (PW3) told the court that on 8 April 2025 he received a KIOXIA 8GB flash disk marked “DM” and attached to PF145, and an ALDEEPO memory card from A/Insp. Michael Gyumi from the office of ZCO – Dar es Salaam for forensic examination. He also said that he received a black Secure Digital (SD) adapter bearing a sticker marked “X.” Inside the SD adapter was a memory card manufactured by ALDEEPO.

After examination, he established that the KIOXIA flash disk contained a video titled *“Tundu Lissu uso kwa uso na watia nia majimboni. No reform, no*

election, njia panda." According to his evidence, the same video/content was also found among the 25 video segments on the ALDEEPO memory card. PW3 testified further that specific words *"wanasema hivi msimamo huu unaashiria uasi. Ni kweli kabisa maana tutazuia uchaguzi. Hivyo tutahamasisha uasi. Hiyo ndiyo namna ya kupata mabadiliko. Tunaenda kukinukisha sana sana uchaguzi huu tutauvuruga maana tunaenda kukinukisha vibaya sana*" appeared in both sets of video material. Using forensic tools, including Amped Authenticate, he examined the videos for metadata, editing, manipulation, deep fakes, compression, noise, lighting, and other indicators of fabrication. It was his evidence that forensic examination indicated that the videos were genuine and had not been fabricated, grafted, or deepfaked. Metadata showed that the flash-disk video had been downloaded from YouTube, with the uploader identified as Jambo TV. Examination of the memory card footage indicated it was recorded with a Sony HXR-NX100 camera. The witness told this Court that he documented the examination, prepared an expert forensic report and a metadata report, sealed the exhibits, and returned them to A/Insp. Michael Gyumi through the police dispatch process. Finally, he identified the exhibits in court by their physical characteristics and contents and sought to tender the KIOXIA flash disk, ALDEEPO memory card, and forensic examination report as exhibits. However, the said exhibits were not admitted into evidence by the court on the reason of the incompetence of the witness who sought to tender them.

P5 (PW4) told the court that on 4 April 2025 at about 16:00hrs, while at Posta ya Zamani garden near NBC Bank, he was perusing social media. He came across the video containing the statement "*tutahakikisha uchaguzi mkuu wa 2025 hautafanyika. tutakinukisha….polisi wanatumika kuiba kura. Majaji ni maCCM hawatendi haki Mahakamani...*" in the Facebook social media featuring Tundu Lissu. PW4 testified that the accused was referring to the Presidential, Parliamentary and Councillor Election. The witness said that he interpreted the word *"kukinukisha"* as meaning breaking or disturbing national peace. He therefore perceived the accused's words as a threat to peace and anticipated disorder or chaos during the election.

PW4 testified further that after watching the video, he went to a coffee gathering at Ubungo, where he found people discussing the accused's statement. He said that many people supported the accused's position, and said they would prevent people from voting on Election Day. This increased the witness's fear that there would be chaos and disruption of the election.

Because of his concerns, PW4 telephoned a relative, who was a police officer at Tabata Relini, and asked whether the officer had seen the accused's video. The officer told him that the police had heard about it and were dealing with the matter. According to him, on 9 April 2025, the witness was contacted by another police officer and instructed to report to Central Police Station. He said he was interviewed about the video and provided information about what

he had seen and heard. It was his evidence that he was frightened by the incidents that happened on Election Day and that he remained indoors for six days, suffered hunger, and could not go out to work.

P6 (PW5) testified that he became involved in CHADEMA political activities in October 2024 and, through attending meetings, became acquainted with the accused and other party leaders, including Chiza @ *"Mwamba wa Kigoma."* In January 2025, he decided to join CHADEMA. Chiza informed him that obtaining a party membership card was a prerequisite, although the process was delayed due to a defective printing machine. He was also told to participate in party's activities, including preparations for political meetings and leading party convoys as a motorcyclist while displaying CHADEMA flags. On 4 April 2025, while at his workplace, PW5 accessed YouTube through his Infinix Smart 8 mobile phone and watched and listened to a speech delivered by the CHADEMA Chairman, Hon. Tundu Lissu, on Jambo TV.

It was his evidence that, during the speech, the accused stated, among other things, the following words: *"Bila mabadiliko hakuna uchaguzi. Hivyo tunakwenda kukinukisha. Tunakwenda kuvuruga uchaguzi… Tunakwenda kukinukisha. Yeyote ambaye atataka kwenda na sisi tutaenda naye. Ambaye hatataka tutamuacha. Kama kuna mtu anataka kugombea udiwani asahau. Yeyote anayetaka kugombea ubunge asahau. Hata mimi Mwenyekiti kuhusu*

kugombea urais hilo sahau. Bila mabadiliko hakuna uchaguzi. Watasema tunafanya uasi, ni kweli utakuwa ni uasi. Bila mabadiliko hakuna uchaguzi."

The witness described the setting in which the speech was delivered. He stated that the accused was speaking from inside a hall, with the Tanzanian national flag behind him and a CHADEMA flag positioned to the side. He further stated that the accused was dressed in khaki-coloured combat.

As to how he came to know the accused, the witness testified that the accused was a veteran and prominent politician. He stated that, after watching and listening to the accused's speech, he was influenced by it and developed the intention to join those who would obstruct the 2025 elections if the demanded changes were not made, including through violence. He further testified that he communicated this intention to Chiza, who congratulated him and promised to involve him in activities aimed at creating violence and to connect him with other youth groups advocating for changes before the elections. The witness also stated that he was subsequently added to a group known as "*Siasa Yetu Update*."

The witness further testified that on 6 April 2025, Chiza informed him that the accused would visit Ruvuma Region, and they were consequently instructed to prepare for his reception in Songea on 10 April 2025. On 9 April 2025, the witness received information that the accused had been arrested in



Mbinga District. Upon enquiring from Chiza, he was assured that the information was true and that the scheduled meeting would proceed. On 10 April 2025, the witness and others gathered at Matarawe Primary School, where they found several CHADEMA leaders. They were, however, ordered by the police to disperse, as the meeting would not take place. They subsequently proceeded to the CHADEMA office at Mfaranyaki, where police again intervened by firing tear gas and ordering them to disperse. They later returned to Matarawe, where Hon. Heche informed them that the police had prohibited the meeting and directed them to disperse.

The witness further stated that on 18 April 2025, he was informed through the *“Siasa Yetu Update”* group of a voluntary walk scheduled for 20 April 2025, during which participants were to wear T-shirts bearing the words “No Reforms, No Election.” On the appointed day, the participants gathered at Matarawe at about 16:00 hours. Shortly thereafter, police officers arrived, ordered them to report to Songea Police Station for questioning, and subsequently took them there. They were informed that they had organised a demonstration without permission and were released on bail on condition that they report to the Regional Crimes Officer’s (RCO) office in Ruvuma on 25 April 2025. On that date, they reported as directed, and the RCO questioned them about how they had come to be in the area in question.



H3923 D/C CPL Michael (PW6) told this court that on 8 April 2024, while on patrol duties in Moshi, he received intelligence information concerning a youth residing in the Njoro area who was allegedly inspiring other youths with the intention of causing violence during the forthcoming national elections. Acting on the information received, the police arrested the said youth and took him to the Kilimanjaro RCO, where an investigation file was opened. The witness stated that the suspect was interrogated and detained and was subsequently released on condition that he reports to the police station every Monday.

According to the witness, on 22 April 2025, he was instructed by the RCO to trace the said youth and record a further statement from him concerning what had motivated him to encourage other youths to cause chaos and violence during the 2025 general elections.

According to the witness, when he located and interviewed the youth, the youth stated that he was a member and supporter of CHADEMA and the accused. He further stated that he had been inspiring other youths because he supported statements made by the accused, which is "*walidhamiria kufanya uasi dhidi ya serikali inayoongozwa na CCM. Mwenyekiti wao alisema hawatakubali uchaguzi ufanyike na wako tayari kukinukisha hadi serikali itakapofanya mabadiliko ya Tume huru ya Uchaguzi pamoja na katiba mpya*."

Of particular significance in the witness's account was the alleged statement by the youth that they intended to rebel against the CCM-led government and would not allow the national elections to take place unless certain changes, including reforms to the Electoral Commission and the adoption of a new Constitution, were made. According to the witness, the youth indicated that they were prepared to cause violence until those demands were met.

P2 (PW7) told the court that he is an electrician and has been a CHADEMA member since 2021. On 4 April 2025 at about 10:00 hours, he watched a YouTube video in which the accused, addressing journalists, called on CHADEMA members not to contest the October general election and stated that the election would be obstructed until changes were made. His evidence showed that the message motivated him to seek clarification from local party leaders. He therefore contacted Essau Chiza, who informed him that he was in contact with national CHADEMA leaders. On 7 April 2025, Chiza informed them that the accused would visit Songea on 10 April 2025 and requested voluntary contributions to cover the costs of the visit. The witness contributed TZS. 10,000.

PW7 testified further that on 9 April 2025, he heard that the accused had been arrested but had no further details. Nevertheless, he went to the planned meeting in Matarawe DS Kitimoto on 10 April 2025 to obtain more

information. He found a good number of police officers present, and he was informed that the meeting would not take place. He then went to CHADEMA offices in Mfaranyaki, where he found leaders including John Heche, Godbless Lema and Essau Chiza. Before any address could take place, the police arrested him and those present. He was taken to the police station and told that he was suspected of incitement and planning to commit violence. He was released on bail and required to report to the police every Monday. He subsequently reported on 14 April 2025 and 22 April 2025, when his statement was taken again by a police officer named Balthazar.

The witness told the Court that he did not know how the election was supposed to be obstructed. He attended the planned meeting because he expected Lissu to explain the meaning and implementation of his instructions.

P8 (PW8) testified that on 4 April 2025, while at Manyema Market, he watched and listened to the accused on Jambo TV on YouTube/Facebook. According to the witness, the accused stated, in substance, that statement of the accused, Tundu Lissu, saying and inspiring youths, that *“lazima tufanye uasi dhidi ya serikali na pia tutakinukisha … tutakwenda kuzuia uchaguzi unaokuja endapo serikali haitafanya mabadiliko.”* The witness told the court that the accused intended to obstruct the October 2025 general election.

The witness further stated that he was a CHADEMA member and that the accused’s alleged statements, together with the slogan “No Reforms, No

Election," inspired him to support the proposed course of action. It was his evidence that he subsequently influenced other youths and circulated the video clip among them, while awaiting permission from the accused to proceed.

The witness also testified that on 8 April 2025, while on his way to Njoro ya Pepsi to encourage youths concerning the "No Reforms, No Election" campaign, he was arrested by the police and taken to the RCO's office in Moshi. He stated that, during interrogation, he admitted that he had been influencing youths to commit treason against the Executive and encouraging them to support the accused's position. He explained, however, that he made the alleged admission because he was extremely frightened. He was subsequently detained, released on bail at about 17:00 hours, and ordered to report every Monday. He reported on 14 April 2025 and, on 22 April 2025, when his statement was recorded by the police officer, Michael, concerning the matter.

PF18544 ASP Geofrey Agrey Lutufye (PW9) provides evidence concerning the arrest of P4 and P7 in Arusha and their alleged connection to the accused's social-media statements. He told the court that on 3 April 2025, at about 17:00 hours, he was on patrol in Arusha with eight other police officers. While on patrol, he received instructions via radio from the Acting RCO, ASP Bonny Mgogo, informing him that an informant had reported that a

group of youths at a Bajaji station in Kwa Mrombo was allegedly encouraging one another to obstruct the 2025 General Election. Acting on the information received, the police proceeded to Kwa Mrombo.

Upon arrival, the witness stated that they found a group of youths allegedly discussing and planning to obstruct the forthcoming General Election. When the police announced that they were under arrest, the youths attempted to flee. The police managed to arrest P4 and P7, while the remaining youths escaped. The police also seized four Bajaji vehicles, two of which were allegedly associated with the arrested persons and the other two with persons who had escaped.

The witness further testified that, while escorting P4 and P7 from Muriet Police Station to the RCO's office, he questioned them concerning the reasons for which they had allegedly been planning to obstruct the 2025 General Election. According to the witness, both P4 and P7 admitted that they supported the accused because of a statement which he had posted on social media. The witness attributed to them the statement that they intended to obstruct the 2025 General Election through incitement and *"kukinukisha."*

The witness stated that P4 and P7 were subsequently handed over to the RCO at about 20:00 hours. The Acting RCO then directed him to open an investigation file, which he did under reference ARS/D/CID/PE/40/2025. Thereafter, the RCO directed that statements be recorded from the suspects,

and the witness assigned police officers at the RCO's office to do so. The witness further testified that on 18 April 2025, he recorded his own statement concerning the matter.

P4 (PW10), told the court that on 3 April 2025, at about 12:00 hours, while waiting for a customer, he used his mobile phone to access YouTube, where he came across a news item concerning the accused addressing a meeting of CHADEMA members that *"tumejipanga kufanya fujo kuzuia uchaguzi".* He added that "*watakinukisha kwani wao hawana imani tena na uchaguzi kwa sababu hata uende wapi huwezi kupata haki kwani hata Majaji ni vibaraka wa CCM. Tume ya uchaguzi imepangwa kukata majina ya wanachama wa CHADEMA*."

He said that he was inspired by the following words, "*tutafanya uasi, tutakinukisha na vyombo alivyosema hawezi kuviamini.*" The witness stated that, after hearing the statements, he became instigated and convinced that he should support the position expressed therein. He attributed his reaction to the economic hardships he was experiencing, including reduced business, reliance on driving a Bajaji for his livelihood, and his overall financial difficulties.

He further testified that after taking a customer to Kwa Mrombo, he returned to find people discussing the accused's statement on social media. The discussion concerned *"kukinukisha",* which some supported on the belief

that disruption would improve their economic circumstances. Among those present were Bajaji riders and shop owners. After about 20 minutes, the police arrived, causing some people to flee. The witness and P7 were arrested.

They were first taken to Muriet Police Station and later transferred to the Central Police Station in Arusha, where they were informed that they were suspected of planning *“kuzuia uchaguzi”*. Their statements were recorded, and they were detained. They were released on bail the following day and subsequently required to report as directed by the police. The witness later gave a further statement and was thereafter allowed to return home.

P7 (PW11), testified before this Court that on 3 April 2024, while at the Bajaji center at Kwa Mrombo, a colleague asked whether they had heard the words: *“walisema watakinukisha mbaya. Polisi wanaiba kura. Hata ukienda mahakamani hutapata haki kwa sababu Majaji ni vibaraka wa CCM. Mwaka 2024 Tume ya Uchaguzi ilipewa maelekezo ya kukata wajumbe wa CHADEMA.”* Interested in the allegation, he used his smartphone to access Jambo TV’s YouTube channel, where he allegedly found the statement his colleague had referred to. Shortly thereafter, police officers arrived and arrested him together with P4. Following his arrest, he was taken to Muriet Police Station, transferred to the Central Police Station, and then to the RCO’s office, where he was informed that he was suspected of intending to

cause violence. Subsequently, his statement was recorded. He was detained and released on bail the following day, subject to reporting to the police as directed. On 17 April 2025, he gave a further statement, which he stated contained the same account as his subsequent evidence before the Court.

H937 D/CPL Vicent (PW12**)** told the court that on 5 April 2025, while performing his duties at Mwanjelwa Police Station, he was instructed by the OCD to trace and arrest P9, who was allegedly instigating and inciting others to cause violence to obstruct the 2025 General Election. He was also given P9's telephone number, reportedly obtained from an informer.

After establishing that P9 was an electrician, he posed as a customer seeking electrical services and phoned him to arrange to meet at Kabwe, Mbeya. Upon P9's arrival, PW12 introduced himself as a police officer, showed his identification card, and informed P9 that he was being arrested on allegations of sedition and incitement to violence intended to obstruct the general election. It was his evidence that P9 neither resisted nor caused any disturbance. He then took him to Mwanjelwa Police Station and handed him over to the OCD. The witness thereafter resumed his duties.

P3 (PW13) told the court that he conducts his business in the Mbeya District Council and has been engaged in the business for approximately nine years. He stated that he has been a member and supporter of CHADEMA since 2021. During his involvement with the party, he participated in various

party activities, including the event held to receive Freeman Mbowe at Mbalizi in Mbeya in 2024. He also participated in preparations for a youth conference scheduled to take place at the Rwanda Nzovwe Primary School grounds. Still, he was prevented by the police, resulting in the participants being dispersed.

The witness recalled that on 4 April 2025, while at a *“kijiweni”*, where he usually parked his motorcycle, he was browsing various social media platforms on his mobile phone. He came across a short press statement made by the accused on YouTube. According to the witness, the statement concerned the obstruction of the forthcoming 2025 General Election. The witness stated that he knew the accused from seeing him on social media and because, after becoming interested in CHADEMA in 2021, he regarded him as the party's Chairman.

The witness testified that, after watching and understanding the statement, and being instigated, he circulated the video clip among Bajaji riders who were CHADEMA members. He stated that he intended to influence them to support the Chairman and unite to fight against and obstruct the 2025 General Election. According to the witness, they discussed a plan to cause violence by stoning persons who intended to participate in the election. He stated that he carried out the instigation among youths at the *“kijiweni,”* where he parked his motorcycle, with some accepting his proposal while others rejected it.

The witness further testified that, after some time, a person approached him, pointed at him, and asked to speak with him separately. Upon approaching the person, the witness stated that the person identified himself as a police officer and directed him to accompany him to the police station for questioning. At the police station, PW13 was placed in the police lock-up. He was subsequently removed from the lock-up and taken to an interrogation room, where police officers questioned him concerning why he was allegedly encouraging rebellion with the intention of obstructing the 2025 General Election. Following the interrogation, the witness was informed that he was required to produce a person to bail him out. He subsequently secured his release through a relative and was directed to report to the police station every after three days.

The witness further testified that on 17 April 2025, while on his way to the *"kijiweni,"* he received a telephone call directing him to report to Ilomba Police Station to give another statement. Upon arrival, he called the number from which the call had been made and was instructed to report to the police station. There, he met a police officer named Amani, who had previously taken his first statement. Amani questioned him and recorded his answers. After the statement had been completed, the witness signed it. He was then directed to continue complying with the requirement to report to the police station as previously instructed.

P9 (PW14) told the court that on 3 April 2025, while at his home, he used a Samsung 8 Pro smartphone to access Instagram, where he came across a video of the accused delivering a speech. He described the video's setting, including the accused's clothing and the presence of the Tanzanian national flag and the CHADEMA flag in the background. According to the witness, the accused stated, among other things, that "*atauvuruga kwa kufanya vurugu na kuzuia uchaguzi usifanyike. Lazima tukichafue*." The witness stated that he was instigated by the speech and consequently formed the intention to support the position expressed therein.

He testified further that on 4 April 2025, he met with his neighbours and discussed the contents of the accused's statement. According to him, they discussed what could be done in response to the alleged message.

According to PW14 on 5 April 2025, a person who posed as a customer arranged to meet him. Upon meeting, the person identified himself as a police officer and arrested him on charges of inciting obstruction of the election. The witness stated that he was taken for interrogation, subsequently released on bail, and directed to report to the police every Monday. The circumstances of his arrest are relevant to the consideration of his evidence, particularly because he was initially treated as a suspect in connection with the alleged conduct before subsequently becoming a prosecution witness.

It was his evidence that on 22 April 2025, he was summoned to Mwanjelwa Police Station and informed that the police wished to question him as a witness. According to him, the interrogation focused on how the incitement had begun, why he had been inciting others, and the source of his motivation. The witness thereafter provided the police with an account concerning the events in question.

G.9304 D/CPL Amani (PW15) testified that on 4 April 2025, Insp. Joram, the Acting OC-CID at Ilomba Police Station, instructed him to go to Isyesye, Mwatengule Street, to arrest P3 after receiving information that he was conspiring with other youths to incite violence and disrupt the 2025 General Election. He was provided with the telephone number of the informant who was to assist in identifying the suspected person.

It was his evidence that the informer took him to the area and discreetly pointed at P3 among other persons present. Soon after, he approached P3, introduced himself as a police officer, and informed him that he was suspected of inciting violence and seeking to disrupt the 2025 General Election. Thereafter, P3 agreed to accompany him to Ilomba Police Station.

The court was told by PW15 that upon arrival at the police station, Insp. Joram instructed him to record P3's statement on the allegation under investigation, which was that P3 had engaged in "incitement to make violence and cause violence to disrupt the 2025 General Election," which the witness

stated was an offence contrary to section 390 of the Penal Code.

The witness said that P3 admitted to instigating his colleagues to resort to violence for the purpose of disrupting the election. More significantly, the witness told the court that P3 stated that he had been following news on social media and, after accessing YouTube, had listened to the accused, whom he identified as the CHADEMA Chairman, making statements concerning rebellion, causing chaos and disrupting the 2025 General Election.

ACP Amini Mahamba (PW16) told the court that on 8 April 2025, while at the Dar es Salaam Regional Police Sub-Headquarters in Posta, he was instructed by Ramadhan Ng'anzi to report to the ZCO to supervise and coordinate the investigation into allegations of treason against the accused. At the ZCO's office, he met PW1, was briefed on the investigation, and reviewed Case No. CDS/IR/727/2025, and organised the investigation into three teams responsible for arrests and operations, intelligence collection, and investigation analysis/legal advice.

It was his evidence that the investigation team subsequently watched, from beginning to end, a video of the accused's speech uploaded to Jambo TV's YouTube account. It was lengthy, lasting approximately two hours and several minutes. During the viewing, he observed the accused, Tundu Antipas Lissu, dressed in a khaki-coloured combat-style uniform, which he believed to

be a CHADEMA party uniform. The accused was standing on a podium and addressing members of the public. Behind him, the witness observed the national flag and a CHADEMA flag. He also observed that the accused was wearing spectacles and addressing the gathering in Kiswahili. The statements considered relevant included *“wanasema kitu kimoja sahihi hapa. Msimamo huu unaashiria uasi. Ni kweli kwa sababu tutazuia uchaguzi. Tutahamasisha uasi. Hiyo ndiyo namna ya kupata mabadiliko kwa sababu tunaenda kukinukisha sana sana. Huu uchaguzi tutauvuruga kwa sababu tunaenda kukinukisha vibaya sana.”* The investigators interpreted these words as threats to obstruct the 2025 General Election, incite rebellion and intimidate the Executive. They therefore considered them to constitute treason under section 39(2)(d) of the Penal Code.

The witness further testified that, in their interpretation, *“kukinukisha”* referred to plans to disrupt the election through tactics such as using stones and creating chaos to prevent people from voting. He maintained that the words posed a threat to peace and public order and were contrary to the Constitution of the United Republic of Tanzania, 1977 (hereinafter “the Constitution”) and laws governing the election. He also considered the publication of the speech on social media significant because it allowed the alleged threats to reach people inside and outside Tanzania.



The witness said that the investigation then involved forensic examination of the video downloaded from YouTube and a memory card obtained from Jambo TV. The materials were submitted to the Digital Image Forensics Laboratory, whose report, according to the witness, confirmed that the accused was the person who uttered the words contained in the video.

According to Mahamba's evidence, the investigation was expanded to incidents reported in Mbeya, Arusha, Kilimanjaro, Ruvuma and Dar es Salaam. Regional Crime Officers reported arrests of persons allegedly involved in incitement and conspiracies to participate in demonstrations. The investigation team obtained and reviewed several case files from the Kilimanjaro Region Investigation Reference File No. KR/CID/PE/18/2025, Arusha Region File No. KRS/CID/PE/40/2025, Mbeya Region File No. MBE/CID/PE/54/2025, Ruvuma Region, File No. SOG/IR/987/2025, and concluded that, although the investigations were still at a preliminary stage, some suspects appeared to have been motivated by statements attributed to the accused. The witness stated that many of those suspects were CHADEMA members or supporters. He directed that the identified persons be traced, arrested where appropriate, and have their statements recorded as witnesses in the treason case.

The Court was told that the accused was arrested on 9 April 2025 while visiting Mbinga District, transported to Dar es Salaam, and brought before the



DZCO on 10 April 2025. According to Mahamba, PW1 read the charges to him, after which the accused declined to state anything at that stage but provided a written statement that he would defend himself in court. The file was then forwarded to the National Prosecutions Service (NPS), and later that day, the accused was taken to the Kisutu Resident Magistrate's Court and charged with treason.

P (PW17) related to the court how on 3 April 2025, he was instructed by his boss, John Marwa, together with five other journalists, including P2, to cover a CHADEMA meeting at its headquarters in Mikocheni. He said that the journalists arrived before approximately 10:00 hours, prepared their cameras, and live-streamed the meeting through Jambo TV's YouTube account. It was his evidence that when they arrived, they found CHADEMA members, fellow journalists, and other ordinary people, but the leaders had not arrived. According to him, the meeting, which lasted about three hours, involved election-related discussions and CHADEMA's slogan "No Reforms, No Election."

It was his evidence that several CHADEMA leaders addressed the meeting, including the accused, Vice Chairperson John Heche and the Secretary-General. The witness recalled that the main discussion concerned electoral reforms and CHADEMA's position that it would not participate in the General Election if reforms were not implemented. He specifically attributed to

the accused the words *"tutazuia huo uchaguzi na tutakinukisha,"* which he said were made in the context of discussions about the forthcoming elections and how the election would be obstructed.

Again, according to him, the meeting was recorded using a Sony camera, with the footage stored on a memory card. After the meeting ended, the journalists were asked to leave so that CHADEMA members could continue their discussions privately. The witness also recalled that the accused was wearing a combat-style outfit, although he could not remember its colour.

Finally, Mr. P told the court that on 7 April 2025, while on duty in Dodoma, the witness received instructions from John Marwa to deliver the memory card containing the recording of the 3 April 2025 meeting to the police. He went to the police station, where his statement was recorded, read and signed. He then handed over the memory card containing the footage to the police.

The 17th witness marked the last prosecution witness, and the prosecution closed its case. Subsequently, the accused was found to have a case to answer. After the accused was informed of his right, he elected to defend himself on oath and called four (4) witnesses.

Tundu Antiphas Lissu (DW1) constantly denied committing the offence of treason. He defended himself by stating that the treason case

was instituted against him on 10 April 2025, following his arrest on 9 April 2025 while addressing a public meeting in Mbinga District. He characterised the charge as the most serious criminal case brought against him. He argued that it arose from a political dispute over electoral and constitutional reforms, rather than from any intention to commit treason.

He testified further that the charge of treason has a bearing on CHADEMA's "No Reforms, No Election" position, which he said was a collective party position that had been adopted on 30 January 2025, before he became Chairman of the party. He said that the position was formally announced on 10 December 2024 and subsequently adopted by the National Congress on 21 January 2025, after which he was elected Chairman. He therefore maintained that the policy was not a personal plan devised by him but a collective decision of the party.

The accused further testified that the strategy for implementing the position was based on peaceful and lawful democratic activities. These included public instigation, demonstrations, civic engagement and advocacy for constitutional and electoral reforms. He expressly denied that the strategy involved any plan to overthrow the Government, commit treason, use violence or cause unlawful disorder.

Concerning the meeting of 3 April 2025, which formed the principal factual basis of the treason allegations, the accused testified that the meeting

was prepared by the Secretary-General, John John Mnyika (DW2). He said that he attended the meeting in his capacity as Chairman of CHADEMA and that his purpose was to explain the party's established position. It was his evidence that his speech focused largely on what he considered weaknesses in Tanzania's electoral system, including the independence of the Electoral Commission, voter registration, candidate disqualifications, election campaigns, media coverage, Election Day procedures, and election petitions.

The accused acknowledged that he advocated for the possibility of Tanzanians boycotting the election and that it could be postponed to allow time for meaningful reforms. However, he maintained that these statements, to wit, *"wanasema kitu kimoja sahihi hapa, wanasema hivi, msimamo huu unaashiria uasi ni kweli ni kweli kwa sababu tunasema tutazuia uchaguzi, tutahamasisha uasi, hiyo ndiyo namna ya kupata mabadiliko... kwa hiyo tunaenda kukinukisha,... sana sana huu uchaguzi tutauvuruga, tutauvuruga huu uchaguzi kwa sababu tunaenda kukinukisha vibaya sana..."* constituted political advocacy concerning the electoral process and were not intended to intimidate or overthrow the Government.

As to the alleged treasonable words, the accused disputed both the prosecution's interpretation of the statements and the evidential basis on which the allegations were founded. He maintained that the words relied upon by the prosecution had been taken out of the context of a much longer

meeting, which he estimated lasted between three and five hours. According to him, the prosecution had focused on a very short portion of the meeting while failing to produce the complete recording, which would have provided the proper context for the statements.

The accused also relied on the evidence of PW17, whom he described as the only prosecution witness present at the meeting. He testified that PW17 recorded and broadcasted the proceedings, but did not hear or witness any statement or intention amounting to treason. He contrasted this evidence with that of PW1, PW2 and PW16, who were not present at the meeting but relied on the video recording and their own interpretation of the alleged statements.

The accused's central defence was that the prosecution had failed to prove the intention required to establish treason. He argued that the investigators had merely inferred a treasonable intention from the words attributed to him without establishing any actual plan to threaten or intimidate the Executive. In particular, he pointed out that the alleged statements did not expressly identify the Government, the President, the Vice-President, the Prime Minister, any Minister, Regional Commissioner, or any other specific organ or member of the Executive. He therefore challenged the prosecution to identify the Government or Executive authority whom he had allegedly intended to threaten or intimidate within the meaning of section 39(2)(d) of the

Penal Code.

The accused further argued that there was no evidence that the alleged intention had ever been put into effect. In his view, none of the prosecution witnesses established what the alleged intention resulted in or identified any act demonstrating that he had moved beyond political speech into treasonable conduct.

He also rejected the allegation that CHADEMA's nationwide instigation amounted to a conspiracy or an attempt to overthrow the Government. He emphasised that the campaign was conducted openly through public rallies and meetings with religious, civic and political organisations. According to him, the open and public nature of these activities was inconsistent with a secret conspiracy to overthrow the Government. He maintained that the objective of the campaign was to persuade citizens to demand electoral reforms and, if necessary, to boycott the election, rather than to seize power, overthrow the Government or use force against the State.

The accused challenged the prosecution's evidence, particularly its failure to produce the full video recording of the meeting. He argued that the recording was essential to establish the exact words spoken and their context. He also pointed to inconsistencies in the prosecution witnesses' evidence regarding the alleged statements, their publication and the accused's intention, relying on PW17's evidence that the media team, rather than the



accused, recorded and published the footage.

The accused challenged the credibility of the protected witnesses and the police investigators, arguing that the investigation was not impartial because the investigators had concluded that he had committed treason before completing their inquiries. He maintained that they failed to seek clarification from him or CHADEMA and disregarded evidence inconsistent with the allegation. He therefore contended that the prosecution had failed to prove any treasonable intention, conspiracy, attempt or act sufficient to sustain the charge.

John John Mnyika (DW2) told the trial court that the statements attributed to the accused, including the words *“uasi,” “tutazuia uchaguzi,” “tutahamasisha uasi,” and “tutauvuruga huu uchaguzi,”* were made in the context of CHADEMA’s “No Reforms, No Election” policy. He testified that the statements were not a call to overthrow the Government or to intimidate it. Still, political advocacy stems from CHADEMA’s formally adopted position that free and fair elections cannot be achieved without constitutional and electoral reforms.

DW2 denied that the accused prepared or convened the meeting of 3 April 2025. He stated that, as CHADEMA’s Secretary-General and chief executive, he personally convened, authorised, funded and supervised the meeting at CHADEMA headquarters. He explained that the meeting

concerned aspiring candidates for the 2025 general election and comprised an open session attended by journalists and a closed session for prospective candidates.

Regarding the alleged treasonous statements, DW2 maintained that the speech attributed to the accused was political advocacy rather than an attempt to overthrow the Government by force. He explained that the words *“tutazuia uchaguzi,” “tutahamasisha uasi,”* and *“tutauvuruga huu uchaguzi”* were used in a political context and intended to instigate citizens to reject an election that CHADEMA considered illegitimate. In his view, the statements amounted to political instigation or an election boycott rather than a treasonous act.

DW2 further testified that the “No Reforms, No Election” position was an institutional decision of CHADEMA, formally adopted through its constitutional organs following stalled discussions with the Government and CCM on constitutional reforms. The proposed “Minimum Reforms” included an independent electoral commission, the right to challenge presidential election results in court, judicial review of the electoral commission's decisions, and independent recruitment of electoral officials. He therefore maintained that the position was not the accused's personal decision.

DW2 emphasised that CHADEMA implemented the policy through open and peaceful political activities, including public rallies, media engagements

and meetings with various stakeholders. He stated that the Government was aware of the position before the alleged statements were made and that CHADEMA had explained its meaning and legal basis to the Registrar of Political Parties on 17 March 2025. According to DW2, the Registrar indicated that the position was political and did not contravene the law.

DW2 relied on the public nature of CHADEMA's campaign to reject the existence of a treasonous conspiracy. He testified that CHADEMA publicly announced its resolutions and conducted its activities openly, and that there was no secret plan to overthrow the Government violently.

On publication, DW2 denied that the accused personally published the alleged statements. He stated that journalists attending the meeting were free to record and report the proceedings. He later checked Jambo TV and found a recording of the meeting lasting approximately three hours, which, according to him, differed from the shorter clip containing the words relied upon in the charge.

Finally, DW2 testified that he had seen no evidence of a coordinated criminal conspiracy arising from the meeting. He stated that he neither reported the alleged statements to the police nor took any disciplinary or other action against anyone following the meeting. He also stated that he was unaware of any journalists or other participants being prosecuted for recording, reporting or disseminating material from the meeting. His evidence,



taken as a whole, was that the words relied upon by the prosecution were political statements made in pursuit of CHADEMA's "No Reforms, No Election" policy and did not constitute a plan or attempt to overthrow the Government by force.

Amani Sam Golugwa (DW3), the Deputy Secretary-General of CHADEMA, testified principally on the background to the Party's "No Reform, No Election" position, the meeting of 3 April 2025, and the context and meaning of the statements attributed to the accused. He stated that the meeting was organised by the CHADEMA Party Secretariat, following instructions from DW2, to educate aspiring candidates for the 2025 General Election. He personally informed the accused and other senior party leaders of the meeting and maintained that the accused was not involved in its preparation or in inviting the attendees. Journalists were also invited, and the meeting was broadcast live by Jambo TV and Chanzo TV without any direction or restriction from the accused.

DW3, who attended the meeting, confirmed that he heard the statements relied upon by the prosecution, including "*msimamo huu unaashiria uasi," "tutazuia uchaguzi," "tutahamasisha uasi,*" and "*tutauvuruga huu uchaguzi*." However, he maintained that the statements had been taken out of context. He explained that the accused's wider presentation focused on electoral and constitutional reforms, previous elections, election observer

reports, and alleged irregularities and violence in the electoral process. According to DW3, the proposal to postpone or defer the election was intended to create an opportunity for meaningful reforms and formed part of political instigation and public education under CHADEMA's "No Reform, No Election" position, rather than an attempt to overthrow the Government.

DW3 rejected the allegation that the statements were intended to intimidate or threaten the Executive. He pointed out that the words attributed to the accused did not refer to the Government, the President, the Vice-President, the Prime Minister, the Cabinet, the Attorney General, the DPP, the Police Force, the TPDF, the TISS, the Prisons Service, or any other security or military institution. He therefore maintained that the impugned word did not, in his understanding, constitute treason. He similarly denied that the statements contained any plan to commit violence, destroy property, attack voters, or cause deaths, noting that none of those acts appeared in the words relied upon in the charge.

DW3 also challenged the allegation that the accused personally published the statements. He testified that Jambo TV and Chanzo TV broadcast the meeting live and that the recordings belonged to the respective media organisations. He maintained that there was no evidence that the accused had published the alleged words and recalled that they had been published by a Jambo TV journalist who had attended the meeting.



Importantly, although DW3 personally heard the alleged statements, he did not report them to the police or any other authority. He stated that, to his knowledge, none of the other persons present did so, and he was unaware of any action taken against the journalists who broadcast the meeting. He further maintained that a single person could not, in his understanding, threaten the Executive, plan and carry out treason alone, and that “mere words” could not, by themselves, constitute treason.

DW3 emphasised that the meeting lasted approximately three hours, while the words reproduced in the charge sheet took only about 26 seconds to read. He therefore maintained that the accused’s intention could not properly be assessed from the isolated words without considering the wider discussion. He testified that the accused addressed electoral reforms, the Nyalali, Kisanga and Warioba Commissions, reports of domestic and international election observers, and CHADEMA’s experiences of alleged electoral irregularities and violence.

Finally, DW3 testified that he had previously heard the accused express the same position in meetings with the Tanzania Editors Forum (TEF), the Shura ya Maimamu’s leader, Sheikh Ponda, the Legal and Human Rights Centre (LHRC), and retired Justice Joseph Warioba. In his view, these occasions demonstrated that the accused’s consistent objective was to educate and instigate the public on the need for electoral reforms, rather than



to threaten the Executive or commit treason. Overall, DW3's evidence was that the prosecution isolated particular words from a broader political discussion and that neither the words themselves, their context, nor the accused's subsequent conduct demonstrated a treasonable intention.

As for Brenda Rupia (DW4), she testified principally on the circumstances of the 3 April 2025 meeting, the context of the words relied upon in support of the treason charge, and the role of the accused in the meeting and their subsequent publication. She stated that the meeting was convened by the CHADEMA Secretariat to educate aspiring candidates about the party's "No Reforms, No Election" position. She told the Court that she personally invited the candidates and members of the media. She maintained that the accused did not prepare the meeting, invite the journalists, or exercise any control over their recording, broadcasting or publication of the proceedings. She witnesses that the accused was the principal speaker and addressed the meeting in his capacity as party Chairman.

DW4 confirmed that she was present throughout the meeting, which lasted approximately three to three and a half hours, while the accused's speech lasted about two to two and a half hours. She testified that the words relied upon in the charge sheet, including "*msimamo huu unaashiria uasi,*" *"tutazuia uchaguzi," "tutahamasisha uasi," "tutauvuruga huu uchaguzi,"* and *"tutakinukisha,"* represented only a very small portion of the accused's lengthy

presentation. In her evidence, the speech principally concerned the electoral system, the need for electoral reforms, and CHADEMA's "No Reforms, No Election" position.

On the allegation of treason and intimidation of the Government, the witness argued that the impugned words contained no reference to the Government of the United Republic of Tanzania, the President, Vice-President, Prime Minister, Cabinet, Attorney General, DPP, or any other executive authority. She further pointed out that the words did not refer to the Police Force, JWTZ, TISS, Immigration, or any other military or security institution. She therefore rejected the suggestion that the words were intended to threaten or intimidate the Government.

The witness also denied that the statements contained any plan to commit violence or destroy property. She testified that the words relied upon did not mention burning BRT or polling stations, attacking voters or election officials, destroying property, or killing anyone on Election Day. In her understanding, the expressions did not, in themselves, constitute a criminal offence. She explained that *"tutakinukisha"* was slang, not a formal or technical expression denoting treason.

DW4 further challenged the evidential basis for attributing publication of the alleged treasonable statements to the accused. She stated that journalists recorded the meeting using their own equipment and that any decision to

broadcast, upload or publish the footage belonged to the respective media organisations. She specifically maintained that the accused was not an employee of Jambo TV and had no responsibility for uploading or distributing its content. She had seen the longer recording on Jambo TV's YouTube channel and noted that the prosecution had not, to her knowledge, played such a recording in court.

Importantly, DW4 placed the impugned words within the broader discussion concerning CHADEMA's "No Reforms, No Election" position. She recalled that the accused was explaining the shortcomings of the electoral system, the areas requiring reform, and the problems experienced in previous elections. She stated that the reference to *"uasi"* arose from the context of the G55 debate, where some members who wanted to participate in the election had described the "No Reforms, No Election" position as rebellion. According to DW4, the accused was explaining what *"uasi"* meant in the political context of opposing an election that was not free, fair or democratic.

John Wegesa Heche (DW5), a vice chairman of CHADEMA and long-time associate of the accused, testified principally on the context, meaning, and purpose of the statements relied upon in the treason allegation.

His evidence was that CHADEMA's "No Reforms, No Election" position was a political demand for constitutional and electoral reforms, arising from concerns over the electoral process, including alleged disqualification of

opposition candidates, interference with campaigns, difficulties faced by party agents, irregularities in counting and declaration of results, and limited avenues for challenging election results. The reforms sought included an independent Electoral Commission, changes concerning Article 74 of the Constitution**,** fair constituency delimitation and greater independence in the electoral process. DW5 maintained that the objective was to secure a free, fair and credible election**,** not to overthrow the Government or unlawfully seize power.

The witness explained that, as Chairman of CHADEMA, the accused was one of the Party's principal spokespersons and was therefore communicating the Party's position to the public and stakeholders. In relation to the words relied upon by the prosecution, DW5 distinguished between *"uasi," "kuhamasisha uasi," "kuvuruga uchaguzi," "kuzuia uchaguzi",* and *"kukinukisha."* He recalled the accused using expressions such as " *tutahamasisha umma kuzuia uchaguzi*" and "*tutauvuruga uchaguzi*," although he could not recall whether "*tutakinukisha*" was used in all stakeholder meetings.

Of particular importance was the 3 April 2025 meeting, which DW5 personally attended. He confirmed hearing the accused uttering the impugned words. Nevertheless, he stressed that these words constituted less than one minute of an address lasting more than two hours. He said the wider speech

was principally concerned with electoral deficiencies, constitutional and electoral reforms, and the position that elections should be postponed until the necessary reforms were implemented.

Specifically on the issue of treason, the witness denied that the accused's words constituted a call for violence or force. He testified that the accused did not call for burning polling stations, BRT stations, CCM offices or vehicles; killing or attacking police officers, election officials or security personnel; cutting voters' fingers; or destroying property. He further told the court that the words stated in the charge sheet did not show that the Government, President, Vice President, Prime Minister, Cabinet of Ministers, Attorney General, DPP, local authorities or other Government institutions were targets, nor did he mention the Tanzania Police Force, JWTZ, TISS, or the Reserve Force to be intimidated.

DW5 therefore understood the impugned expressions as political advocacy for the mobilisation and postponement of the election, rather than as instructions to commit unlawful acts, intimidate persons, or overthrow the Government.

DW5 also rejected the alleged causal link between the 3 April 2025 speech and the violence of 29 October 2025. He told the court that he was in detention on Election Day and therefore did not personally witness the events. His subsequent information came from media reports, election observer

reports, and statements from international, regional, and religious organisations, including material associated with the Commission chaired by retired Chief Justice Othman Chande. DW5 said he did not hear Justice Chande identify the accused as the person who caused, directed or ordered the killings, destruction of property or attacks on security forces.

The foregoing consists of the material evidence of the case. After full trial, parties made final submissions which availed this court
with relevant authorities regarding the principles and matter, which we are very grateful. However, we shall give a summary of it in this judgment. More details will be applied in assessing the evidence. The accused person set the ball rolling.

In his submission, the accused accepted that allegiance to the United Republic was an essential ingredient of treason under section 39 of the Penal Code. Although he did not make a substantive challenge to his own allegiance and did not dispute that, as a Tanzanian, he owed allegiance to Tanzania, he maintained that the prosecution nevertheless bore the legal burden of proving every essential ingredient of the offence and that no ingredient could be presumed merely because of his nationality or political position.

He relied upon the constitutional and statutory principle of legality under Article 13(6)(c) of the Constitution, which prohibits punishment for conduct

that was not an offence when committed, and section 5 of the Penal Code, which defines an offence by reference to an act, attempt or omission punishable by law. He also relied on Order 1 paragraph 25 of the Police General Orders, 2021, and **Bahame Sitta & Another vs. Republic** (Criminal Appeal No. 166 of 2019) [2022] TZCA 706 (11 November 2022: TanzLII), for the *nullum crimen sine lege* principle, that there can be no crime or punishment without prior legal prescription.

On the burden of proof, the accused invoked section 117(1) and section 3(2)(a) of the Evidence Act [Cap. 6 R.E. 2023] (hereinafter "the Evidence Act"), arguing that the person who alleges must prove the allegation and that, in criminal proceedings, the standard is proof beyond reasonable doubt. He likewise relied on **Oscar Lwela vs. Republic** (Criminal Appeal 49 of 2013) [2013] TZCA 476 (21 June 2013: TanzLII), for the proposition that the burden remains upon the prosecution and never shifts to the accused. The accused's broader position is that the prosecution bears the entire burden of establishing every ingredient of treason and that no ingredient may be presumed merely from the seriousness of the charge. The accused, therefore, argued that allegiance could not simply be assumed from his presence in Tanzania or his status as a political leader. Since the prosecution itself treated allegiance as an ingredient of treason, it had to be established in accordance with the applicable law.

He further invoked the rule that penal statutes must be strictly construed in favour of an accused person, relying on **Rex v. Mwanangomeni [1933] Vol. 9 EACA 134 at 135; Amin s/o Mrisho vs. Republic [1971] HCD 41 at 42;** and **Issa Hassan Uki vs. Republic,** (Criminal Appeal No. 129 of 2017) [2018] TZCA 000346 (10 May 2018: TanzLII). In the accused's formulation, therefore, the prosecution must prove allegiance as an independent constituent of the offence rather than invite the Court to presume it from the surrounding political circumstances.

Submitting on the issue whether he formed an intention to intimidate the Government or Executive, the accused submitted that the prosecution failed to plead and prove that the Executive of the United Republic of Tanzania was intimidated by the alleged treasonable words. He argued that, under section 39 of the Penal Code, the occurrence of any particular result or consequence is not an essential element of the intention required for the commission of treason, and that no contrary requirement is established in **Gray Likungu Mattaka & Others vs. Republic** [1971] EA 495 or **Hatibu Gandhi & Others vs. Republic** [1996] TLR 12 neither of which, he contended, treated the occurrence of a particular consequence as an essential element of treason, the Court in those cases not having been addressed on the consequence or result contemplated under section 10(2) of the Penal Code. Nevertheless, he maintained that where the prosecution relies upon intimidation as a material consequence of the alleged treasonable conduct, it must be specifically

pleaded in the Information and proved beyond a reasonable doubt; hence, the Information was defective for failure to particularise how the Executive was allegedly intimidated or threatened. On the evidence, the accused contended that no actual intimidation was established, as the prosecution called none of the relevant members or institutions of the Executive under Chapter Two of the Constitution, nor key security officials, including the Director-General of Intelligence and Security Services, Chief of Defence Forces, Inspector General of Police, and Director of Criminal Investigation, to testify on the alleged intimidation. He therefore emphasised that the burden of proving intimidation remained throughout upon the prosecution and never shifted to the defence and invited the Court to draw an adverse inference from the failure to call material witnesses and find that the alleged intimidation of the Executive had not been proved beyond a reasonable doubt.

He further submitted that section 39(2)(d) of the Penal Code does not criminalise political opposition, criticism of Government, or an intention simply to obstruct or boycott an election. The provision requires a specific criminal intention, namely, an intention to instigate, persuade, counsel or advise a person or group of persons for the purpose of effecting the intimidation of the Executive, Legislature or Judiciary. The Republic, therefore, had to prove that specific intention beyond reasonable doubt.



The accused drew particular attention to the statutory phrase “any person or group of persons.” He argued that the Information materially departed from that wording by alleging that he intended to instigate “the public” to obstruct the 2025 General Election. Since “public” has a broad meaning under section 5 of the Penal Code, whereas Parliament deliberately used the narrower expression “any person or group of persons” in section 39(2)(d) of the Penal Code, the prosecution was required, in his view, to identify the person or group of persons whom he allegedly intended to instigate.

He further argued that an allegation that he intended to “obstruct the 2025 General Election” was not equivalent to an allegation that he intended to intimidate the Government or Executive. The distinction was fundamental because an intention to boycott or obstruct an election does not automatically establish the specific *mens rea* required by section 39(2)(d) of the Penal Code.

According to the accused and his defence witnesses, the statements were made in the political context of the slogan “No Reforms, No Election.” Their purpose, he said, was political mobilisation and opposition to what they considered an illegitimate electoral process, rather than intimidation of the Executive in the legal sense contemplated by section 39(2)(d) of the Penal Code. He argued that the prosecution had taken words from a wider political



speech, sometimes reproducing them with ellipses, and thereby deprived them of their proper context.

The accused relied particularly on the evidence of DW4 to explain the words *"wanasema kitu kimoja sahihi hapa"*, which he said were a response to social-media allegations that his political position amounted to incitement to rebellion. Viewed in their complete context, he argued, the words did not establish an intention to intimidate the Executive.

He again relied on **Rex v. Mwanangomeni** (supra), **Amin s/o Mrisho** (supra), and **Issa Hassan Uki** (supra), for strict construction of penal provisions. He also cited **Isidori Patrice vs. Republic** (Criminal Appeal No. 224 of 2007) [2007] TZCA 277 (30 October 2007: TanzLII), for the principle that the particulars of a charge must contain the essential facts necessary for an accused to understand the allegation and prepare a defence.

The accused further relied on **Freeman Aikael Mbowe & 7 Others vs. Republic,** (Criminal Appeal 76 of 2020) [2021] TZHC 3705 (25 June 2021: TanzLII), particularly its reasoning concerning the need to identify the authority targeted by allegedly treasonable political statements. By analogy, he argued that where section 39(2)(d) of the Penal Code speaks of intimidation of the Executive, the prosecution should identify the particular governmental authority or office-holder intended to be intimidated.

He invoked Article 151(1) of the Constitution, which defines the Government, to argue that the Government encompasses numerous institutions and offices. Thus, merely alleging an intention to intimidate the "*Government*" without identifying the particular target left the allegation insufficiently defined.

Finally, the accused relied on section 55 of the Penal Code and the constitutional protection of political participation and expression. His argument was that political criticism or opposition could not, without more, be transformed into treason. At most, the prosecution had proved that political words were spoken; it had not proved the specific *mens rea* required by section 39(2)(d) of the Penal Code.

On manifestation, the accused drew a distinction between mere words, publication, and the overt act or deed contemplated by section 39(2)(d) of the Penal Code. His principal authority was **Hatibu Gandhi & Others** (supra), particularly the relevant passages at pages 13 and 55–58. He understood that decision as establishing that treason requires an overt act or deed and that mere words do not, by themselves, constitute treason unless they explain or form part of treasonable conduct.

The accused also relied upon the historical development of treason law. He referred to the Treason Felony Act 1848, under which "open and advised speaking" had expressly been included, and to the subsequent repeal of

those words by the Statute Law Revision Act 1891. He relied on **Regina v. Her Majesty's Attorney General, ex parte Lusbridger & Another [2003] UKHL 38** to support his historical argument.

His submission was therefore that the prosecution was effectively asking the Court to create a form of "treason by words" which Parliament had not enacted. Doing so, he argued, would contravene Article 13(6)(c) of the Constitution and section 5 of the Penal Code because a court cannot enlarge a penal offence by judicial interpretation.

The accused also relied on **Gray Likungu Mattaka & Others** (supra) where the Court considered "publication" under section 39(2) of the Penal Code and treated publication as the act of sending out or sharing writing or printing with a third party. On that basis, he argued that the statutory concept of publication could not simply be expanded to cover every form of modern electronic broadcasting.

This became particularly important concerning the Jambo TV YouTube broadcast. The accused argued that there was no reliable evidence that he personally published the video. He pointed to contradictions among PW1, PW2, PW3, and PW16 regarding who uploaded, transmitted, or disseminated the recording. PW1 initially attributed publication to Jambo TV personnel but later attempted to link it to the accused by alleging that the accused had caused the journalists to publish the words. PW2 initially said he did not know

who uploaded it but subsequently attributed publication to the accused. PW3 admitted that he had not established who uploaded it; while PW16 initially attributed publication and transmission to the accused but subsequently accepted that Jambo TV personnel had recorded and live-streamed the meeting.

The accused submitted that these were not minor discrepancies but contradictions that went to the very foundation of the prosecution's case. He relied on **Makonyo John @ Kibuna & 2 Others vs. Republic** (Criminal Appeal 305 of 2018) [2022] TZCA 277 (13 May 2022: TanzLII) together with **Hamis Said Adam vs. Republic,** (Criminal Appeal No. 529 of 2016) [2018] TZCA 000061 (11 December 2018: TanzLII) ; **Maramo Slaa Hofu & 3 Others vs. Republic,** (Criminal Appeal No. 246 of 2011) [2012] TZCA 000398 (11 May 2012: TanzLII) and **Mohamed Matula vs. Republic** [1995] TLR 3, for the principle that contradictions which go to the root of the prosecution case may render the relevant evidence unreliable.

He further relied on **Nguza Viking @ Babu Seya & Others vs. Republic** (Criminal Appeal No. 56 of 2005) [2005] TZCA 239 (11 February 2010: TanzLII) and **Oscar Lwela** (supra) for the broader proposition that evidence must be assessed cumulatively and that a conviction must rest upon the strength of the prosecution case, not the weakness of the defence.

The accused also complained that the actual video recording had not been properly tendered as prosecution evidence, despite the prosecution having indicated that it would rely on it. Since the parties allegedly gave different accounts of the recording's contents and duration, he argued that oral descriptions could not substitute for the disputed recording itself.

He additionally argued that if the complaint was essentially about a media organisation broadcasting video material, the relevant legislation was the Media Services Act, 2016 (hereinafter “the Media Services Act”), particularly section 7 concerning collection, editing, dissemination, and broadcasting of media content. Since he was charged under section 39(2) of the Penal Code and not under the Media Services Act, the prosecution could not import a broader concept of electronic publication from another statutory regime into the Penal Code.

His ultimate position was therefore that there was neither proof that he personally published the video nor proof that electronic broadcasting constituted the kind of publication contemplated by section 39(2) of the Penal Code, particularly in light of **Gray Likungu Mattaka & Others** (supra) and **Hatibu Gandhi & Others** (supra).

The prosecution’s submission was marshalled by Mr. Katuga. It first drew this court’s attention that the three issues substantially corresponded with the elements identified by the Court of Appeal in **Hatibu Gandhi &**

Others (supra), although he emphasised an important distinction: the present charge alleged manifestation "by deed," whereas **Hatibu Gandhi** (supra), concerned manifestation by an "overt act."

On allegiance, the prosecution submitted that the matter was not genuinely in dispute. He relied on section 39(2) of the Penal Code, which makes allegiance to the United Republic a foundational requirement of treason.

More importantly, he said that the accused had admitted his allegiance during the preliminary hearing under section 198 of the Criminal Procedure Act [Cap. 20 R.E. 2023] (hereinafter the "CPA"), and that the admission was recorded in the Memorandum of agreed matters at page 133, fact number 3.

Mr. Katuga regarded the issue of intention to intimidate the executive as the central question. He relied on the language of section 39(2)(d) of the Penal Code, which applies where a person under allegiance to Tanzania forms an intention to instigate, persuade, counsel or advise any person or group of persons to effect or cause to be effected the intimidation of the Executive, Legislature or Judiciary.

He submitted that the Penal Code did not expressly define "Executive," "Judiciary," or "Government" for this purpose. Consequently, those terms should receive their ordinary and plain meaning. He relied on **Nasibu Abubakari Mwalyega @ Rasi vs. Republic** (Criminal Appeal No. 146 of

2021) [2024] TZCA 576 (18 July 2024: TanzLII) which cited **Republic vs. Mwesige Godfrey & Another**, (Criminal Appeal 355 of 2015) [2015] TZCA 264 (19 February 2015 TanzLII), as well as the principle in **Caminetti v. United States**, 242 U.S. 470 (1917) that where statutory language is clear, plain and unambiguous, the court's function is to apply the statute according to its terms.

Mr. Katuga therefore rejected the argument that the charge had to identify a narrower governmental office-holder. He maintained that the charge, read together with the evidence, sufficiently informed the accused of the case he had to answer. He relied on **Damiani Ruhere vs. Republic** (Criminal Appeal No. 501 of 2007) [2012] TZCA 77 (02 March 2012: TanzLII), where the Court of Appeal recognised that evidence adduced at trial may, in an appropriate case, cure an omission or defect in a charge where the accused has not been prejudiced in understanding or preparing his defence.

The prosecution also relied on the evidence of PW1 and PW16 concerning the Government's responsibility for enforcing the law, maintaining peace and public order, and conducting elections under the law. Mr. Katuga emphasised the accused's own evidence, particularly his acknowledgement that the Executive enforces laws made by Parliament and that the police, operating under Government, maintain peace and order.

His central point was that actual intimidation of the Executive was not required. Section 39(2)(d) of Penal Code, according to him, focuses on the accused's purpose or intention, that the relevant conduct be undertaken for the purpose of intimidating the Executive. The Republic, therefore, had to prove the intended purpose, not demonstrate that the Executive was actually intimidated.

Mr. Katuga argued that the impugned words, concerning preventing or disrupting the election, rebellion and serious disturbance, demonstrated an intention to mobilise the public to obstruct the electoral process and thereby exert pressure upon the Executive to make political changes demanded by the accused.

For the meaning of “instigate,” he relied on **Mahendra KC v State of Karnataka & Another,** Criminal Appeal No. 1238 of 2021, where the Supreme Court of India explained that instigation includes goading, provoking, inciting or encouraging another person to act. It need not always be expressed in precise words; the Court may consider whether the words and conduct, in their circumstances, were intended to provoke or encourage the relevant conduct.

Mr. Katuga also relied on the meaning of *“uasi”* in *Kamusi Kuu ya Kiswahili*, submitting that it includes an unlawful collective attempt to change the political system and resistance to authority or existing laws and

procedures. He connected that meaning with DW3's evidence that “No Reform, No Election” was intended to bring about changes to Tanzania's political system.

The prosecution further argued that aspects of the defence evidence actually reinforced its case. It relied on **Hamis Chuma @ Hando Mhoja vs. Republic** (Criminal Appeal 36 of 2018) [2021] TZCA 395 (23 August 2021: TanzLII), together with the principle associated with **Mohamed Haruna @ Mtupeni & Another vs. Republic** (Criminal Appeal 259 of 2007) [2010] TZCA 141 (04 June 2010: TanzLII), that defence evidence may, depending on the circumstances, carry forward or strengthen the prosecution's case. He also relied on evidence that the accused knew his conduct might result in a treason charge, arguing that this demonstrated awareness of its potential legal character.

The prosecution placed considerable emphasis on evidence from PW5, PW7, PW8, PW13 and PW14 concerning how the words were understood by members of the public. PW13, in particular, allegedly contemplated supporting efforts to prevent the election and to create disorder around polling. The prosecution argued that this showed that the words were not merely abstract political rhetoric but were understood by at least some followers as an encouragement to take concrete action.



The prosecution also relied on the accused's acknowledged influence over his followers. That influence, it argued, was relevant to determining the likely meaning and intended effect of the words.

To connect the alleged intimidation with the Executive, the Prosecution relied on Articles 30(2)(b) and 147(2) of the Constitution, concerning governmental responsibility for peace, security and the protection of the country and its people. It also invoked section 5(a) and (b) of the Police Force and Auxiliary Services Act, [Cap. 322 R.E 2023] (hereinafter “the Police Force and Auxiliary Services Act”) concerning the police responsibility to maintain peace and order. Its argument was that deliberate threats to disrupt peace and public order necessarily implicated the Executive because the Executive has institutional responsibility for maintaining that order.

The fact that only three (3) of seventeen (17) prosecution witnesses expressly connected the statements with the Government's responsibility for peace and order, he submitted, was immaterial. Section 152 of the Evidence Act does not prescribe a particular number of witnesses required to establish a fact; the question is the quality and sufficiency of the evidence considered as a whole.

The Prosecution therefore invited the Court to find that the accused had formed the requisite intention to intimidate the Executive by mobilising the public to obstruct or disrupt the electoral process as a means of exerting



pressure on the Government.

On manifestation, the Prosecution's principal distinction was between “overt act” and “deed.” He accepted the authority of **Hatibu Gandhi & Others** (supra) that words uttered by themselves could not constitute an “overt act,” but argued that the present charge did not require an overt act. It alleged manifestation “by deed.”

Relying on **Black's Law Dictionary**, he argued that a “deed” means something done or carried out, an act or action. It contrasted that with an “overt act,” which refers to an outward physical manifestation of the will, particularly in the context of conspiracy.

It further relied on the ordinary meaning of “manifestation”, referring to the **Oxford Advanced Learner's Dictionary,** 8th Edition, as the act of showing something clearly. It invoked section 5 of the Penal Code concerning the meaning of “utter”, arguing that uttering words is itself an act or conduct. Thus, the prosecution's formulation was that the accused's intention constituted the *mens rea*, while the act of uttering the words constituted the *actus reus* through which that intention was manifested.

The prosecution maintained that the fact of utterance was effectively undisputed. Sixteen (16) prosecution witnesses allegedly heard the words through the Jambo TV YouTube broadcast, PW17 heard them directly at the meeting, and the accused himself admitted uttering them. DW2, DW3, DW4

and DW5 likewise confirmed hearing the accused speak.

The remaining question was dissemination or publication. The Prosecution gave publication its ordinary meaning: making something known or communicating it to others. On that basis, it said publication occurred in two ways. **First,** the accused directly communicated the impugned words to persons physically attending the meeting. **Secondly,** the words reached the wider public through Jambo TV's live stream on YouTube. PW17 testified that he live-streamed the meeting, and the prosecution argued that the accused did not need to personally operate the press, which was a recognised means of ensuring that matters became publicly known. The prosecution, therefore, maintained that the relevant question was not who organised the meeting or who operated the recording camera or uploaded the material in order to communicate the words to the public.

The Prosecution relied on the accused's own evidence concerning journalists, arguing that inviting the press was a recognised means of ensuring that matters became publicly known. The prosecution, therefore, maintained that the relevant question was not who organised the meeting or who operated the recording equipment, but whether the accused uttered his words in circumstances in which they were communicated to the public.

As to the absence of the actual video recording, Mr. Katuga relied on section 3 of the Evidence Act, under which electronic material may fall within

the definition of a document, but argued that the law does not create a hierarchy, even in the absence of documentary evidence. Consequently, failure to tender the video did not, in the Republic's submission, make documentary or electronic evidence automatically superior to oral testimony.

He relied on **Goodluck Kyando vs. R.** [2006] TLR 387 for the proposition that a competent witness is entitled to credence unless there are reasons on the record for disbelieving that witness. He also relied on **Abas Kondo Gede vs. Republic** (Criminal Appeal 472 of 2017) [2020] TZCA 391 (12 August 2020: TanzLII) for the proposition that a fact may be established through oral evidence even in the absence of documentary evidence. Consequently, failure to tender the video did not, in the Republic's submission, prevent the Court from relying on witnesses who had seen and heard the broadcast.

Finally, Mr. Katuga characterised the contradictions identified by the defence as minor discrepancies that did not go to the root of the case. He relied on **Musa Mbelechamo vs. Republic** (Criminal Appeal No. 912 of 2023) [2026] TZCA 51 (17 February 2026: TanzLII) for the proposition that minor discrepancies which do not affect the substance of a case should not be elevated into reasonable doubt.

He further relied on **Popart Emmanuel vs. Republic** (Criminal Appeal 200 of 2010) [2011] TZCA 169 (27 June 2011: TanzLII), for the proposition



that there is no rule preventing persons from the same institution from testifying in the same proceedings, and on **Director of Public Prosecution vs. Sharif s/o Mohamed @ Athumani & Others** (Criminal Appeal 74 of 2016) [2016] TZCA 635 (05 August 2016: TanzLII) for the principle that a person is competent to testify where he or she possesses knowledge of the facts in issue, and section 151 of the Evidence Act, in answer to the suggestion that some witnesses had interests to serve. In **Basilid John Mlay vs. Republic** (Criminal Appeal 306 of 2018) [2022] TZCA 716 (21 October 2022: TanzLII), the prosecution relied on the principle that a witness's interest in the outcome does not by itself make that witness incompetent; it affects credibility and weight. Mr. Katuga also relied on **Abel Orua @ Matiku & Others vs. Republic,** (Criminal Appeal No. 441 of 2020) 2024 TZCA 78 (21 February 2024: TanzLII), for the proposition that an omission from an earlier statement does not necessarily constitute a material contradiction where the witness subsequently explains or elaborates on the substance of the oral evidence.

Before dwelling on examining the evidence and submissions, we find it relevant to preface our deliberations with the obvious general principles that will inevitably guide us in determining the case.

The first relates to the standard of proof and who bears the burden of proof in a criminal case. It is settled law that in criminal cases the burden of



proof lies on the prosecution to prove its case beyond reasonable doubt, and that burden never shifts. [See **Oscar Lwela** (supra)].

The second principle relates to what it takes to convict. A settled law has it that a conviction in a criminal case must be based on the strength of the prosecution's case and not on the weakness of the defence case. [See **Nguza Viking @ Babu Seya & Others** (supra); **Mohamed Haruna @ Mtupeni & Another** (supra), and **Vitalis Joseph vs. Republic (Criminal Appeal No. 384 of 2021 [2022] TZCA 882** (19 December 2022: TanzLII).

The third concerns the assessment of evidence. The law requires that evidence be assessed cumulatively and as a whole, rather than by examining each piece of evidence in isolation. [See **Oscar Lwela** (supra); **Nguza Viking @ Babu Seya & Others** (supra)].

The fourth principle revolves around the settled law that suspicions, however ingenious or strong, can never form the basis of a criminal conviction or serve as a substitute for proof beyond reasonable doubt. [See **Republic vs. Kerstin Cameron** [2003] TLR 84].

The fifth principle relates to the construction of statutes. The law requires that statutes imposing penal sanctions be construed strictly in favour of the accused. [See **Rex vs. Mwanangomeni** (supra); **Amin s/o Mrisho** (supra), and **Issa Hassan Uki** (supra)]. In a similar vein, where the statutory language is clear, plain and unambiguous, the court's function is to apply the

statute according to its terms. [See **Nasibu Abubakari Mwalyega @ Rasi** (supra), which cited **Republic vs. Mwesige Godfrey & Another** (supra)].

After careful consideration of the information, the evidence on record, and the parties' final submissions, we are of the considered view that three issues naturally emerge and are confident that they will assist us in smoothly determining this matter. They are as follows:

1. Whether the accused owed a duty of allegiance to the United Republic of Tanzania within the meaning of section 39(2)(d) of the Penal Code.

2. Whether the accused formed an intention to instigate the public to effect the obstruction of the 2025 general election for the purpose of intimidating the Executive.

3. Whether the accused manifested his intention to intimidate the Executive through his act of uttering and disseminating the words in question.

However, before going into the nitty-gritty of these issues, it is apposite that we first tackle the points of objection relevant to this case raised by the accused during the defence and final submissions regarding the validity of the information. In doing so, we comply with a cardinal principle that criminal proceedings are initiated by a charge, and determination of the competence of a charge is important in order to proceed any further on any other matters for determination in the case before us. [See **Revocatus Mugisha vs.**

Republic (Criminal Appeal No. 200 of 2020 [2022] TZCA 62 (22 February 2022: TanzLII]. These points of law are as follows: **first,** the instigation of "the public" is not the offence prescribed by section 39(2)(d) of the Penal Code; **second**, the information failed to provide sufficient particulars; and **third,** a mismatch between the alleged objective and the statutory intention.

Before dwelling on the issues at hand, we wish to humbly remind parties that the validity of the Information was raised by the accused and settled by this court vide its ruling delivered on 22 September 2025. This court pronounced itself that the information was valid and that it complied with section 135 of the CPA.

Besides, since at this stage the accused has insisted that the Information is incurably defective based on the three points of law stated above, we shall again deliberate on them to better understand our previous position.

The accused argued in the first limb of objection that section 39(2)(d) of the Penal Code refers to instigating "any person or a group of persons," whereas the Information alleges instigation of "the public." He argued that given the broad statutory meaning of "public," the prosecution was required to identify the particular person or group allegedly instigated. He contended that the discrepancy violated Article 13(6)(c) of the Constitution, which embodies the principle of legality. Relying on **Bahame Sitta & Others** (supra), **Rex v.**



Mwanangomeni (supra), and **Amin s/o Mrisho** (supra), he maintained that criminal offences must be expressly prescribed by law and penal statutes strictly construed in favour of the accused.

On the second limb of objection, the accused argued that the Information failed to identify the specific governmental authority or office-holder allegedly intended to be intimidated. Citing **Isdory Patrice** (supra) and **Freeman Aikael Mbowe & 7 Others** (supra), he submitted that these omissions prevented him from adequately understanding the accusation and preparing an effective defence.

Concerning the third limb of objection, the accused argued that the Information identifies the objective of the alleged instigation as obstructing the 2025 General Election, whereas section 39(2)(d) of the Penal Code requires the intention of intimidating the Government or Executive, as applicable to the statutory wording. He maintained that these objectives are legally distinct and that the Information failed to adequately allege the specific intention required by law.

Accordingly, he invited this Court to declare the Information invalid for departing from the statutory description of the offence, omitting essential particulars, and failing to state the requisite criminal intention.

The prosecution conceded that section 39(2)(d) of the Penal Code refers to instigating “any person or group of persons,” whereas the

Information uses “the public.” It also accepted that where a specific person or group is targeted, that person or group should be identified in the Information.

Nevertheless, the prosecution argued that section 5 of the Penal Code defines “public” broadly enough to encompass “any person or group of persons”. Since the accused allegedly addressed the public at large rather than a particular group, the expression was appropriate. It maintained that the charge complied with section 135 of the CPA and that the meaning of “public” should be assessed in the context and circumstances of the case.

Regarding the term “Executive,” the prosecution submitted that, since section 39(2)(d) of the Penal Code does not expressly define it, the term should be interpreted according to its ordinary meaning and the plain meaning rule. It relied on **Nasibu Abubakari Mwalyega** (supra), **Republic vs. Mwesige Godfrey & Another** (supra), and **Caminetti v. United States** (supra). The prosecution further relied on **Damiani Ruhere** (supra) for the principle that defects or omissions in a charge may, in appropriate circumstances, be cured by evidence adduced at trial. It argued that the testimony of PW1 and PW16, together with the accused’s admissions during cross-examination concerning the Executive’s responsibility for enforcing laws and maintaining law and order, demonstrated that he understood the allegation and suffered no prejudice. It, therefore, maintained that the Information was valid and sufficiently particularised to enable the accused to

prepare an effective defence.

The prosecution's position, therefore, is that the Information is valid and sufficiently particularised enabling the accused to understand the nature of the allegations and prepare an effective defence.

Those are the competing views for our consideration now. This court is tasked to answer the issue of whether the Information sufficiently discloses the offence created under section 39(2)(d) of the Penal Code and provides adequate particulars to enable the accused to prepare a defence.

This issue echoes the long-standing principle that the charge is the foundation of a criminal trial and that, once it is found to be defective, reference to the evidence is uncalled for. See **Ntobangi Kelya & Another vs. Republic** (Criminal Appeal 256 of 2017) [2021] TZCA 393 (23 August 2021: TanzLII)

On the first objection, we find that the difference between the statutory expression "any person or a group of persons" and the expression "the public" used in the Information does not, by itself, render the Information defective. As correctly argued by the prosecution, the mere use of the term "the public" does not necessarily render the Information defective, since section 5 of the Penal Code defines it broadly to include "persons" generally, while the expression "any person or group of persons" falls within that meaning. Accordingly, the two expressions are not necessarily inconsistent. This



section states that:

> *"public" refers not only to all persons within Mainland Tanzania but also to the persons inhabiting or using any particular place, or any number of those persons, and also to such indeterminate persons as may happen to be affected by the conduct in respect to which such expression is used."*

Having considered the prosecution evidence, the accused's extensive cross-examination of prosecution witnesses, and the supporting testimony of DW2, DW3, DW4 and DW5, we are satisfied that the accused understood the nature of the offence and suffered no prejudice. Therefore, the Information as a whole sufficiently informed the accused of the case he was required to meet.

In the event, we are certain in our minds that the use of the expression "the public" did not, by itself, invalidate the Information and neither prejudiced the accused nor disabled his ability to stage a formidable defence. We, therefore, overruled the first objection.

Moving to the second objection, we reiterate the established principle that a charge must contain sufficient particulars to inform the accused persons of the nature and substance of the accusation against them. Upon examining the Information, we are of the considered view that it contains sufficient particulars to adequately inform the accused of the nature and substance of the accusation.



Accordingly, the use of the term *"executive"* in the Information was not random; rather, it was informed by the wording of the relevant statutory provision, which identifies the specific organ of the Government that the accused is alleged to have intended to intimidate. This interpretation is consistent with the plain meaning of the statute, particularly because the term *"executive"* is not expressly defined in the Penal Code. Under the plain meaning rule of statutory interpretation, where the words of a statute are clear and unambiguous, they must be given their ordinary and natural meaning. See **Nassibu Abubakary Mwalyenga @ Rasi** (supra), in which the Court provided guidance on the interpretation of statutory provisions as follows:

> *"It is elementary that the meaning of the statute must in the first instance be sought in the language in which the Act is framed and if it is plain: the sole function of the court is to enforce it according to its terms."*

We further hold that the absence of an express statutory definition of "Executive" in section 39(2)(d) did not, by itself, render the provision uncertain. The accused's cross-examination of PW1, PW2 and PW16, and his reliance on Articles 147(2) and 151(1) of the Constitution and section 5(a) and (b) of the Police Force and Auxiliary Services Act, demonstrates his understanding of the Executive as the Government or any person, organ or branch exercising governmental authority, particularly in enforcing laws, maintaining peace and public order, and safeguarding national defence and security.



The accused's assertion that he neither mentioned nor intimidated the Executive on 3 April 2025 further demonstrated his understanding of the allegation. In view thereof, we conclude that the particulars in the Information, sufficiently identified the alleged offence and enabled the accused to defend himself effectively.

Regarding the third objection, we agree with the prosecution that, under section 39(2)(d) of the Penal Code, the prosecution must prove beyond reasonable doubt that the accused acted with the specific intention of intimidating the Executive, although it need not prove that actual intimidation occurred.

We further emphasise that the intention to obstruct an election and the intention to intimidate the Executive are not legally equivalent. Nevertheless, an intention to obstruct an election may support an inference of an intention to intimidate the Executive, depending on the circumstances. Therefore, assessing the objection in light of section 39(2)(d) of the Penal Code, the evidence, and the circumstances surrounding the allegations, we find that the third objection is devoid of merit. We overrule it. Consequently, we reiterate our position that the Information is not defective and therefore, we overrule the accused's points of objection.

Having resolved the points of objection, we are now warranted to deliberate on the issues we have raised hereinabove.



The first issue for determination is whether the accused owed a duty of allegiance to the United Republic of Tanzania within the meaning of section 39(2)(d) of the Penal Code. This issue calls upon this Court to determine whether, at the time of the alleged commission of the offence, the accused was under a legal obligation of allegiance to the United Republic of Tanzania and therefore fell within the category of persons contemplated under the relevant provision.

The determination of this issue is fundamental because allegiance constitutes an essential first element of the offence of treason under section 39(2)(d) of the Penal Code. The prosecution must, therefore, establish beyond reasonable doubt that the accused owed allegiance to the United Republic of Tanzania at the time of he committed the offence. In the absence of proof of this essential element, criminal liability under the said provision cannot be founded merely on the accused's alleged conduct.

In our view, this issue does not present any serious difficulty, as both the prosecution and the defence agree that on 3 April 2025 the accused owed a duty of allegiance to the United Republic of Tanzania. We consider this position to be legally sound for the reasons set out below.

Although the Penal Code does not define the term *allegiance*, Black's Law Dictionary, 8th edition, defines it as the obligation of fidelity and obedience owed by a citizen to the government or sovereign in return for the

protection afforded by the State. In short, allegiance of a person may arise from the protection granted by the state. This definition corresponds with the holding in **Joyce vs. Director of Public Prosecutions** [1946] AC 347. In this case, the House of Lords stated that:

> *"a person who enjoyed the protection of the British Crown, could owe allegiance sufficient to support a charge of treason."*

The definition distinguishes between natural allegiance, which native-born citizens or subjects owe to their nation, and temporary allegiance, which resident aliens owe to the State during their period of residence. Additionally, in **Serikali ya Mapinduzi ya Zanzibar (SMZ) vs. Machano Khamis Ally & 17 Others** [2002] TLR 338, the Court of Appeal of Tanzania emphasised that allegiance is owed to a sovereign State.

We have carefully reviewed the evidence of the present case. It establishes that the United Republic of Tanzania is a sovereign state, and that the accused owed allegiance to it at the material time. The first and most direct evidence is the accused's own admission during the preliminary hearing, where he voluntarily acknowledged that he is a Tanzanian citizen by birth and holds a Tanzanian passport bearing No. TAE 458265, issued by the Tanzania Immigration Department. Pursuant to section 198(4) of the CPA a fact admitted or not disputed during a preliminary hearing is deemed to have been duly proved unless the court requires more evidence to prove it.

This conclusion is further supported by the totality of the evidence on record, which is consistent with the accused's status as a Tanzanian citizen. In particular, the evidence establishes that, on 3 April 2025, when the accused uttered the impugned words forming the subject matter of the Information, he was within the territory of the United Republic of Tanzania, specifically in Kinondoni District, Dar es Salaam Region. His presence within the territory of the United Republic of Tanzania at the material time further confirms the circumstances in which the offence is said to have occurred.

In light of the foregoing, we are convinced that the accused owed a duty of allegiance to the United Republic of Tanzania on 3 April 2025, the date of the commission of the offence. We accordingly answer the first issue in the affirmative.

Determination of the first issue in the affirmative brings us face to face with the second issue: whether the accused formed the intention to instigate the public to obstruct the 2025 general election for the purpose of intimidating the Executive. The issue requires this Court to pronounce itself on whether the accused person had the necessary criminal intention (*mens rea*) to instigate or incite members of the public to obstruct the 2025 general election to intimidate the Executive in terms of section 39(2)(d) of the Penal Code.

As a matter of law, the prosecution must prove beyond reasonable doubt that the accused acted with the requisite criminal intention, as



distinguished from legitimate political criticism, advocacy for constitutional reforms, or participation in peaceful protests. Since intention (*mens rea*) is an internal state of mind, it cannot ordinarily be established by direct evidence. Still, it may be inferred from the accused's overt acts or deeds, conduct, and the surrounding circumstances. In **Ally Kauzeni vs. Republic** [1985] TLR 79, the Court held that:

> *"The intention must always be gathered from the circumstances which naturally flow from the act, because a man is usually presumed to intend the consequence of his own act."*

Discerning from the above excerpt, this Court must determine whether the evidence before us establishes beyond reasonable doubt that the accused, by uttering the impugned words, formed a specific intention required under section 39(2)(d) of the Penal Code. The evidence must show that the acts flew from the uttering of the words or, in simple terms, the presumed consequences of his act.

In this case, the prosecution contends that, on 3 April 2025, the accused uttered the following words: *"tutazuia uchaguzi," "tutahamasisha uasi," "tutakinukisha,"* and *"tutavuruga uchaguzi"*. By these words, the prosecution asserts that the accused intended to instigate the public to obstruct the 2025 general election with the purpose of disrupting the electoral process, undermining peace and public order, and exerting pressure on the executive to implement the political changes sought by the accused and his associates.



To support this contention, the prosecution relied on the wording of the impugned statements, the context in which they were made, the accused's understanding of the functions and responsibilities of the Executive, and the evidence of both prosecution and defence witnesses. In particular, it relied on the testimony of PW4, PW5, PW7, PW8, PW10, PW11, PW13, and PW14 concerning the influence of the accused's statements on members of the public and the accused's defence that he is a very influential person both within the country and worldwide.

The prosecution further relied on the evidence of PW1, PW2, and PW16 regarding their interpretation of the impugned words. PW2 testified that after listening, he concluded that the impugned words contained criminal elements. He thus reported to PW1. After viewing the video clip shown to him by PW2, PW1 formed an opinion that the statements in the Jambo TV broadcast demonstrated an intention to instigate the public to obstruct the 2025 general election and thereby intimidate the Executive. PW1 considered these statements treasonous because, in his view, they disclosed an intention to intimidate the Executive by opposing the enforcement of electoral laws, contrary to section 39(2)(d) of the Penal Code. He further testified that the accused made the statements in the presence of invited journalists, resulting in their broadcast and wider dissemination through social media. His initial conclusion was that the impugned words appeared to contain criminal elements. Finally, he concluded that the accused had committed an offence

under section 39(2)(d) of the Penal Code.

PW16, for his part, interpreted these words as indicating a plan to disrupt the election by throwing stones and inciting chaos to prevent people from voting. He maintained that the threatened obstruction was intended to intimidate the Executive into pursuing the course of action advocated by the accused, thereby constituting treason under section 39(2)(d) of the Penal Code. He further testified that the publication of the speech on social media made the alleged threats accessible to the public both within and outside Tanzania.

Turning to the evidence concerning the events at the meeting held on the material date, PW17, the only prosecution eyewitness, testified that he attended the meeting, which commenced at 10:00 hours. In addition to recording and live streaming the proceedings, he personally heard the accused's speech. PW17 heard the accused stating that reforms were necessary and that, in their absence, they would not participate in the general election. Among the words PW17 recalled were *"tutazuia huo uchaguzi na tutakinukisha*." Notably, PW17 did not consider it improper for the accused to discuss electoral challenges or to use the slogan "No Reforms, No Election," nor did he perceive criminality in those statements.

The prosecution maintained that the purpose behind the accused's statements, when considered in their proper context, was not merely to



oppose the election but to instigate the public to compel the Executive to implement the political reforms demanded by the accused and his associates. It is submitted that the decisive consideration under section 39(2)(d) of the Penal Code is that the accused acted for the purpose of intimidating the Executive, rather than whether the Executive was actually intimidated. In support of this argument, the prosecution relied on expressions referring to rebellion, obstruction of the election, and *"tutakinukisha,"* together with the meaning attributed to the term *"uasi,"* to demonstrate an intention to instigate unlawful conduct as a means of achieving political change.

The prosecution further relied on the accused's admission that he uttered the impugned words, his understanding of the Executive's responsibilities, and the evidence of DW2, DW3, and DW4 to support its contention that the statements were deliberate and intended to exert pressure on the Executive through disruption of elections and intimidation of the Executive.

In short, the prosecution's case is that the accused's statements, particularly those referring to preventing the election, instigating rebellion and disrupting the electoral process, demonstrated an intention to engage in conduct going beyond ordinary political advocacy and potentially amounting to intimidation of the Executive. The Prosecution maintained that the accused's demand for electoral reforms had to be considered alongside the



means allegedly proposed to achieve those reforms. However, the central issue was whether the alleged intention to disrupt the electoral process necessarily translated into an intention to intimidate the Executive.

In his defence and submissions, the accused told this Court that the impugned words were made in the context of CHADEMA's political campaign for electoral reforms under the slogan "No Reforms, No Election." He maintained that the expressions were intended to communicate political opposition to the conduct of the election in the absence of the necessary reforms, rather than to intimidate the Executive or incite treason. He further argued that none of the impugned expressions expressly referred to the Executive and that the prosecution has failed to establish the specific criminal intention required under section 39(2)(d) of the Penal Code.

This interpretation is supported by the testimonies of DW2, DW3, DW4 and DW5 who explained that the "No Reforms, No Election" position was intended to bring about changes in the country's political system. Nevertheless, they told this court that the word *"uasi"* was intended to signal an intention to change the political system through democratic means and to boycott the general election, in contrast to the definition of *"uasi"* in part "a" in the TUKI Dictionary. That definition describes *"uasi"* as an unlawful act committed by a group of people with an intention of changing the political system. The defence relied on this interpretation to argue that the expressions



must be understood within their political context rather than automatically construed as evidence of an intention to intimidate the Executive.

The accused further stated that the purpose of the meeting was to educate electoral aspirants about the challenges facing the electoral system and to persuade them to support the “No Reforms, No Election” slogan by advocating an electoral boycott until the necessary reforms were implemented. He denied intending to threaten the Executive, incite violence, or mobilise members of the public to engage in violent acts. It was submitted that these objectives were not subjected to cross-examination. Relying on **Director of Public Prosecution vs. Justice Lumina Katiti and 3 Others** (Criminal Appeal No. 15 of 2018) [2022] TZCA 505 (12 August 2022: TanzLII) , **Nyerere Nyague vs. R** (supra), and **Chora S/o Samson @ Kiberiti vs. Republic** (Criminal Appeal 516 of 2019) [2021] TZCA 628 (01 November 2021: TanzLII), he argued that the failure to cross-examine the defence witnesses on this material evidence is tantamount to accepting it.

He added that the prosecution is bound to prove the requisite criminal intention in accordance with the statutory requirements and that it cannot rely on speculation or presume that political opposition to the electoral process necessarily constitutes treason.

In a nutshell, therefore, the accused’s defence is that the impugned statements were made in the context of political advocacy aimed at

demanding electoral reforms and mobilising public support for an electoral boycott, rather than threatening or intimidating the Executive. The accused's position is that advocating an electoral boycott does not, without more, amount to treason, instigating rebellion, or unlawfully obstructing an election. The defence therefore maintains that the Prosecution must prove, through the actual words used and the surrounding circumstances, that the accused intended to engage in conduct falling within the scope of section 39(2)(d) of the Penal Code, rather than merely relying on the provocative or forceful nature of his political statements.

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We now turn to the central issue of whether the impugned expressions attributed to the accused, when considered in their proper context and in light of the evidence as a whole, establish the requisite criminal intent to instigate members of the public to obstruct the 2025 General Election or to intimidate the Executive, contrary to section 39(2)(d) of the Penal Code; or whether, instead, those expressions are reasonably consistent with political advocacy for electoral reforms under the slogan "No Reforms, No Election".

As indicated above, the prosecution's case, as emerges from the evidence, is that the accused's ultimate objective was to intimidate the Executive into undertaking comprehensive electoral reforms ahead of the 2025 General Election. According to this interpretation, the accused intended



to achieve that objective by inciting the public to obstruct the election, incite rebellion, and cause serious disruption. The prosecution's underlying proposition is that, because the Executive bears responsibility for administering and enforcing the law, including the Constitution and electoral legislation, as well as maintaining peace and public order, deliberate attempts to prevent or disrupt the election constitute an indirect threat to the Executive.

Our further consideration of competing arguments points out that the central controversy lies in the interpretation of the impugned words and the inference to be drawn from them concerning the accused's intention. PW1 and PW16 understood the statements as demonstrating an intention to intimidate the Executive, compel the Executive to adopt a particular course of action, obstruct the 2025 general election, instigate rebellion and threaten peace and public order. The accused, by contrast, explained that his objective was to mobilise political support for electoral reforms and that the expressions were intended to convey opposition to holding an election without the demanded reforms.

Notwithstanding the foregoing contentions, the evidence adduced by both the prosecution and the defence establishes several material facts that are common ground and remain undisputed. It is undisputed that, for a considerable period, CHADEMA had been advocating reforms to the laws governing the electoral process, the Constitution, and the independence of the National Electoral Commission (NEC) [now the Independent National



Electoral Commission (INEC)]. Following the challenges encountered in previous elections, the party adopted the slogan “No Reforms, No Election.” Subsequently, in response to numerous inquiries from party members concerning the participation of their aspirants in the 2025 general election, DW2 directed that a meeting be convened to explain the party’s position. The meeting was held on 3 April 2025, during which the accused uttered the impugned words in the presence of the party’s senior leaders, members, including electoral aspirants, and journalists. According to PW17, DW2, DW3, DW4, and DW5, the proceedings were live-streamed to ensure the accused’s speech reached a wider public.

The principal dispute, however, concerns the meaning and legal significance of the impugned statements. The defence maintains that the statements did not amount to treason but were politically provocative expressions intended to communicate opposition to an unreformed electoral process and to advocate collective resistance or an electoral boycott, rather than to threaten or intimidate the Executive. The prosecution, on the other hand, interprets the statements as demonstrating an intention to intimidate the Executive into implementing the demanded reforms by instigating the public to obstruct the election, incite rebellion, and cause serious disruption.

The existence of these competing interpretations does not, by itself, resolve the question of criminal liability. Nor does it necessarily follow that the

accused's explanation must be accepted simply because it offers a political rationale for the statements. The question here is which inferences are reasonably supported by the evidence as a whole and whether the prosecution's inference of the specific intention required by section 39(2)(d) has been proved beyond reasonable doubt.

We have carefully scrutinised the evidence of PW1, PW2 and PW16 concerning the impugned statements, including *"Tutazuia uchaguzi," "Tutahamasisha uasi," "Tutavuruga uchaguzi,"* and *"Tutakinukisha vibaya sana."* Rather than demonstrating, through cogent and concrete evidence, the specific intention underlying these expressions, the prosecution witnesses instead interpreted them as indicating that the accused intended to intimidate the Executive. The Information makes it clear that the purpose of instigating the public was to effect the intimidation of the Executive.

We have carefully examined the entire body of the prosecution evidence and have found not even a scintilla of evidence demonstrating that the utterance of the impugned words resulted in any consequences capable of manifesting the criminal intention alleged against the accused. Our reasoning is anchored on the principle that the prosecution was required to adduce evidence proving beyond reasonable doubt that the impugned statements went beyond mere advocacy of a boycott and constituted conduct falling within the ambit of section 39(2)(d) of the Penal Code. Such conduct could not properly be presumed merely from the political nature of the slogan or the



forcefulness with which it was expressed. A close examination of the testimonies of PW1, PW2 and PW16 reveals that their evidence was confined principally to their interpretation of the impugned words and the consequences they presumed would flow from them. In our considered view, such interpretations and assumptions, unsupported by cogent evidence of the actual conduct or consequences contemplated by the law, amount to mere suspicion. It is trite that suspicion, however strong, cannot form the basis of a criminal conviction. [See **Republic vs. Kerstin Cameron** (supra)]. Accordingly, the prosecution evidence falls short of proving beyond reasonable doubt what the accused actually did, beyond uttering the impugned words, that could properly constitute the offence of treason. In the absence of evidence establishing the essential criminal conduct required by law, the allegation cannot be sustained.

In the present case, we are of the considered view that, for conduct to constitute treason under section 39(2)(d) of the Penal Code, three distinct questions arising from the evidence must be carefully addressed. The **first** concerns the factual determination of what the accused actually said and the circumstances in which the impugned statements were made. The **second** relates to the inference that may reasonably be drawn from the established facts regarding the accused's intention. The **third** is the ultimate legal question of whether the conduct and intention established by the evidence satisfy the essential ingredients of the offence of treason as prescribed by



law. Whereas the first is essentially a question of fact, the second requires a careful evaluation of the evidence to determine whether the alleged intention can reasonably be inferred therefrom, while the third is a question of law falling within the exclusive province of the Court. In this regard, an investigating officer's interpretation of the impugned statements, however firmly held, cannot, without supporting evidence, establish the accused's criminal intention or determine whether the conduct in question legally constitutes treason.

We say so, guided by legally accepted principle that the intention (*mens rea*) is an internal state of mind. Since it cannot ordinarily be established by direct evidence, it must always be gathered from the circumstances which naturally flow from the act, because a man is usually presumed to intend the consequence of his own act. It is settled in our jurisdiction that Criminal intent is inferred from actions or deeds. The court is entitled to examine the accused person's conduct before, during and after the commission of the alleged offence to determine whether the requisite criminal intention existed. [See **Ally Kauzeni** (Supra)].

We are also reinforced in our deliberations by section 10(1),(2) and (3) of the Penal Code, cited to us by the accused, which addresses criminal responsibility for acts or omissions that occur independently of a person's will, or for events that occur by accident, and the relevance of intended results and



motive. For ease of reference, we reproduce the whole section as hereunder:

> *10.–(1) Subject to the express provisions of this Code relating to negligent acts and omissions, a person is not criminally responsible for an act or omission which occurs independently of the exercise of his will or for an event which occurs by accident.*
>
> *(2) Unless the intention to cause a particular result is expressly declared to be an element of the offence constituted, in whole or in part, by an act or omission, the result intended to be caused by an act or omission is immaterial.*
>
> *(3) Unless otherwise expressly declared, the motive by which a person is induced to do or omit to do an act, or to form an intention, is immaterial so far as regards criminal responsibility*.

Hatibu Gandhi & Others (supra) sets out the essential requirements for a conviction for treason, including formation of the requisite intention and the presence of an overt act or deed.

The Prosecution impressed upon us that the act or conduct was demonstrated. It defined the word “utter” to denote an act in light of section 5 of the Penal Code, which defines “utter” to include “using or dealing with and attempting to use or deal with and attempting any person to use, deal with or act upon the thing in question.” It therefore argued that those acts were capable of manifesting the intention required under section 39(2) of the Penal Code. The Prosecution further maintained that the essential consideration was whether the accused acted to intimidate the Executive, rather than whether the Executive was actually intimidated. According to the Prosecution,

the words were intended to exert pressure on the Executive by mobilising the public to disrupt elections and incite unrest. In support of this argument, the Republic relied on the persuasive decision of **Mahendra KC vs. State of Karnataka & Another** *(supra)*, submitting that instigation need not be express but may be inferred from the nature, context and purpose of the words used.

We respectfully agree with the prosecution on this theory and that uttering words is an act. Nevertheless, it is necessary to distinguish between the accused's intended political consequence and the legal character of the means assumed would be adopted to achieve it. In our considered view, a demand that the Executive implement reforms is intended to exert political pressure without necessarily amounting to intimidation. Equally, where the evidence establishes that a person intended to compel the Executive to act through the deliberate incitement of rebellion or other unlawful conduct, the political character of the ultimate demand would not, by itself, exclude the application of the criminal law. That is why we say that the decisive consideration is not the political nature of the objective alone. Still, the specific intention and conduct proved by the prosecution would lead to a conviction.

In our considered view, therefore, the prosecution's case rests substantially on the suggestion that the accused's alleged advocacy of obstruction, rebellion and disruption was intended to intimidate the Executive into implementing electoral reforms hence treason. The defence challenges

that suggestion by maintaining that the statements were political expressions intended to mobilise support for an electoral boycott and to press for changes to the electoral system. The two positions therefore differ not so much over the existence of the political demand as over the purpose and legal significance of the language allegedly used to advance it.

In view thereof, the Court must guard against two equally important errors. The **first** would be to assume that provocative political speech necessarily constitutes intimidation merely because it challenges the Executive or threatens to disrupt an electoral process. The **second** would be to conclude that the pursuit of electoral reform necessarily excludes criminal intention, irrespective of the means advocated or the circumstances in which the statements were made.

Ultimately, the prosecution bears the burden of proving beyond reasonable doubt that the accused possessed the specific criminal intention required by section 39(2)(d) of the Penal Code. The interpretations advanced by PW1 and PW16 are relevant to that inquiry, but they cannot substitute for proof of the essential conduct that led to a certain consequence which was presumed. The question whether the evidence, considered cumulatively and in its proper context, establishes that the accused intended to intimidate the Executive in the statutory sense, was not properly answered by the evidence. This means, therefore, that the accused's political statements, however provocative they may have been, cannot be characterised as treason solely



based on the witnesses' interpretations and a deed of uttering.

Furthermore, the fact that the Executive is constitutionally responsible for conducting elections, enforcing electoral laws, and maintaining peace and stability does not, without more, render any conduct intended to disrupt an election or prevent people from voting an act of treason. Although such conduct may raise legitimate concerns regarding public order and the exercise of electoral rights, the Prosecution was required to prove the specific acts committed, their resulting consequences, and the essential ingredients of the offence charged, including the requisite criminal intention and the nature of the alleged threat to the Executive. The mere obstruction or disruption of an election does not, in itself, constitute treason. Such conduct may, depending on the facts proved and the applicable statutory provisions, disclose other electoral or criminal offences; however, it cannot be elevated to treason without proof of the essential elements of that offence.

It is our unfeigned decision that the evidence of PW1 and PW16, as summarised, does not, on its own, justify a conviction for treason unless the evidence as a whole establishes beyond reasonable doubt that the accused possessed and manifested the specific intention required by section 39(2) of the Penal Code. In a similar vein, the evidence of PW4, PW5, PW7, PW8, PW10, PW11, PW13, and PW14 gives what they were instigated to do rather than the criminal intent of the accused's conduct Further to that, PW17, in our view, depicts what the meeting's objective was, contrary to other prosecution

witnesses. Our firm view is that there is no cogent evidence proving that the accused's words crossed the legal boundary between political opposition and criminal intimidation.

A fundamental point that must not be overlooked is that the conduct of the accused and his associates, insofar as it involved the exercise of constitutionally protected rights, is recognised and protected by our Constitution. Indeed, the evidence of PW1 and PW16 acknowledged the existence of these constitutional rights. Although the Constitution does not expressly confer an unlimited right on any political opposition party to challenge the Executive or the ruling party, it guarantees fundamental rights and freedoms essential to the functioning of a democratic, multiparty system of governance. These include freedom of opinion and expression under Article 18(a) – (d), freedom of association and peaceful assembly under Article 20(1), and the right to participate in public affairs under Article 21(1) and (2). Article 3(1) recognises Tanzania as a state that adheres to multiparty democracy, while Articles 8(1)(c) and (d) emphasise government accountability to the people and their participation in public affairs. Articles 12(2) and 13 (1) further protect human dignity and equality before the law.

However, we stress that constitutional protections for freedom of expression, political association, and participation in public affairs safeguard legitimate political dissent and do not exempt individuals from criminal liability

where an offence is proved.

We, therefore, find that the prosecution has failed to prove the essential element of the offence of treason. Consequently, we answer the second in the negative.

Finally, we turn to the last issue: whether the accused manifested his intention to intimidate the Executive by uttering and disseminating the impugned words. For clarity, this issue tasks this Court with determining whether the accused's act of uttering and disseminating the impugned words constituted a legally sufficient manifestation of an intention to instigate the public to effect the obstruction of the 2025 general election for the purpose of intimidating the Executive, within the meaning of section 39(2)(d) of the Penal Code.

The prosecution, through the evidence of PW1, PW2 and PW16, sought to establish that the accused manifested his intention by instigating the public to effect the obstruction of the 2025 general election by uttering the words *"tutazuia uchaguzi," "tutahamasisha uasi," "tutakinukisha," and "tutavuruga uchaguzi"* in a public setting and allowing their message to reach a wider audience. By doing so, he effected his purpose of intimidating the Executive. The prosecution further relied on the recording, live streaming, and dissemination of the speech via Jambo TV and social media as evidence that the alleged statements were publicly communicated rather than made

privately, thereby manifesting the accused's alleged intention.

In elaboration, the prosecution argued that publication was established through direct communication to persons attending the meeting on 3 April 2025, including PW17, DW2, DW3, DW4 and DW5, who testified that they heard the impugned words. The prosecution submitted that PW17's evidence of live streaming through Jambo TV's YouTube channel, together with the presence of journalists and supporting defence testimony, established that the accused intended his message to reach the public.

It was argued that neither the accused's role in organising the meeting nor his personal uploading of the video was essential to proving publication. Further, relying on **Goodluck Kyando** (supra) and **Abasi Kondo Gede** (supra), the prosecution maintained that oral testimony from credible and trustworthy witnesses established publication despite the absence of the video recording. On that basis, the prosecution maintained that the absence of the video recording does not, by itself, undermine its case. It therefore submitted that the utterance and public communication of the impugned words, considered in their circumstances, proved beyond reasonable doubt that the accused manifested his intention of instigating the public to effect the obstruction of the 2025 general election for the purpose of intimidating the Executive.

The defence evidence came from DW1, DW2, DW3, DW4 and DW5. Their cumulative testimony is to the effect that the journalists from Jambo TV and other media outlets were responsible for broadcasting the meeting's proceedings and that the accused did not personally publish or direct its publication. Both in his oral evidence and final submission, the accused challenged the prosecution's failure to tender the video recording as evidence of the alleged intention. He held the view that the failure to tender the video, despite undertaking to do so, and the fact that all the witnesses referred to it undermined proof of the alleged publication of the impugned words.

The accused submitted further that the prosecution failed to establish that he personally disseminated the impugned words, as the evidence indicated that Jambo TV journalists recorded, live-streamed, and uploaded the meeting. His position was that the utterance of the words and their subsequent dissemination did not, without proof of the requisite intention of instigating the public to effect the obstruction of the 2025 general election for the purpose of intimidating the Executive.

We have carefully examined the prosecution's evidence and the accused's defence concerning the publication and dissemination of the impugned speech. We agree with the accused's defence that the prosecution did not provide sufficient evidence to prove that the accused personally uploaded the video to Jambo TV's YouTube account. Specifically, there was

no evidence showing that the accused had access to the account, knew or possessed its password, or personally logged in to upload the recording. In our view, the fact that the speech was published and disseminated must be distinguished from proof that the accused personally uploaded or controlled its publication. The mere fact that the video appeared on Jambo TV's YouTube account did not establish that the accused had uploaded it or exercised control over the account.

Despite the failure to prove that the accused personally uploaded the video, we find that the prosecution proved beyond reasonable doubt that the speech was made, recorded, and disseminated. The evidence also demonstrates that the accused addressed journalists and made the impugned statements in a public setting. These circumstances indicate that the statements were not private remarks but were communicated in a manner capable of reaching Tanzanians and other audiences for the purpose of instigating them.

Yet, our finding concerning the uploading of the video did not automatically resolve the question of the accused's criminal liability under section 39(2)(d) of the Penal Code. Even if the prosecution could not prove that the accused personally uploaded the recording, the accused could still be held liable if the prosecution established that the accused's own words and conduct constituted a deed manifesting the intention required by that

provision. In other words, the central issue is not limited to who uploaded the video. It is whether the accused's own utterances, considered in their proper context, satisfied the legal requirements for the alleged offence. This distinction means that the failure to establish direct involvement in the online publication was not, by itself, sufficient to determine the case in the accused's favour. The prosecution still had to prove the essential elements of the offence through the accused's own the intention and conduct accompanying it. Nevertheless, it failed.

The emerging question at this juncture is whether the prosecution's failure to tender the video, despite undertaking to do so, undermines proof of the alleged publication of the impugned words.

The position in our jurisdiction is settled that all facts (except the specific contents of documents) may be proved by oral evidence, provided that the oral evidence is direct. If a witness directly saw or heard a publication happening, their testimony is substantive evidence. See section 67 of the Evidence Act. We agree with the prosecution that it is the court's undeletable duty to evaluate the credibility of the human witness rather than dismissing the claim due to a lack of electronic backing. We further agree with the prosecution that even when physical/documentary exhibits are missing, oral testimony can cleanly supply the missing gaps and sustain a conviction or finding of fact. [See **Esther Chidzungu Phanuel vs. Director of Public**

Prosecutions (Criminal Appeal No. 627 of 2024) [2026] TZCA 1237 (12 October 2026: TanzLII). It is our firm view that the absence of a technological record, such as a video or printout, does not defeat a fact that has been convincingly proved by credible oral accounts.

Primarily, the evidence must be weighed, not unquestioningly counted or categorised. In **Hemed Said Mbilu vs. Mohamed Mbilu** [1984] TLR 113, the rule was established that courts should consider which evidence carries greater *probative weight* based on truthfulness and probability. A piece of electronic media is merely one tool of proof; if it is unavailable, the fact of publication can be proved by circumstantial or direct oral evidence from those who witnessed it. That is why the Court of Appeal, well guided, held in **Goodluck Kyando** (supra) that a competent witness is entitled to credence unless there are good reasons to disbelieve him, and in **Abasi Kondo Gede** (supra) that a fact may be proved by oral evidence notwithstanding the absence of documentary evidence.

Similarly, in the present case, we are satisfied that, even in the absence of the video, the oral accounts of all the prosecution and defence witnesses have sufficiently proved that the accused uttered the impugned words and that the same were published for public consumption.

For the foregoing discussion, we find that the prosecution's failure to tender the video, despite undertaking to do so, does not undermine proof of



the alleged publication of the impugned words.

We have already found that, from the evidence and arguments presented before this Court, the prosecution has not proved beyond reasonable doubt that intimidation of the Executive was the accused's intended purpose when it comes to treason offence in terms of section 39(2)(d) of the Penal Code. The question that follows is whether that failure is fatal to the prosecution's case under section 39(2)(d), or whether the provision permits liability to be established based on the accused's conduct independently of the unproved intention.

From a legal perspective, we are satisfied that the failure to prove the requisite intention to intimidate the Executive is fatal to the prosecution's case under section 39(2)(d) of the Penal Code. The provision does not create criminal liability merely because an accused person uttered or disseminated particular words. It requires proof that the accused formed the specified intention and manifested that intention through publication or some other overt act or deed whatsoever. The statutory wording expressly links the overt act or deed to the intention formed by the accused.

The prosecution's duty was to produce evidence proving the accused's conduct and the criminal intention it manifested. We have indicated hereinabove that, based on the evidence on record, the accused uttered the impugned words and that they were communicated to the public.



Nevertheless, with transparent honesty, this evidence cannot independently replace the unproved intention to intimidate the Executive. Consequently, we find that the failure is fatal to conviction under that provision because the overt act or deed is legally relevant only insofar as it manifests the intention required by the statute, as far as a treason charge is concerned.

In the upshot, we find that the prosecution has failed to prove beyond reasonable doubt that the accused manifested his intention to intimidate the Executive by uttering and disseminating the impugned words.

Overall, the prosecution, in our firm view, has failed to prove that the accused committed the offence of treason. Therefore, the accused person is not found guilty of treason under section 39(2)(d) of the Penal Code.

Having found that treason has not been proved to the hilt, it is imperative to determine whether a substituted conviction can be legally and safely entered against the accused. This aspect was raised by the accused person, who strongly submitted that there is no cognate, minor, or lesser offence in treason charge. The prosecution did not address this point.

It is crystal clear that the Courts of law, in our jurisdiction, are vested with powers under section 319(1)(2) of the CPA, formerly section 300 (1)(2), to enter substituted convictions even if the accused person was not charged with the lesser or minor offence. For ease of reference, the cited provision

reads:

> *"319.– (1) Where a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved but the remaining particulars are not proved, he may be convicted of the minor offence although he was not charged with it.*
> *(2) Where a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence although he was not charged with it."*

The plain reading of the above provision apparently settles that the substitution of conviction for a minor offence is not automatic. Customarily, the offence which an accused may be convicted of upon the dismissal of the main charge, at the judgment stage, must be a cognate and minor one compared to the original charge. The concept is that the two offences must relate to one another.

Courts in our jurisdiction have as well interrogated Section 300 (now section 319) of the CPA at considerable length. In **Director of Public Prosecutions vs. ACP Abdallah Zombe & Others** (Criminal Appeal No 358 of 2013) [2016] TZCA 877 (16 September 2016: TanzLII), the Court of Appeal discussed section 300 (2) of the CPA, citing the case of **Miswahili Mulugala vs. R,** (1977) LRT No. 25 and subscribed to the position of the learned judge of the High Court as a correct position. The learned judge said:

"Although the subsection is seemingly general. I think it has to be strictly construed. The test in my view should be whether the minor offence is accommodated in or cognate to the major offence before conviction can be entered for such minor offence. The word "cognate" is defined in the 1966 Impression of Chambers' Twentieth Century Dictionary to mean "of the same family, kind or nature: related or allied." And according to P.G. Osborn's Concise Law Dictionary, 1962 Impression, in Roman law the word "cognate" meant "persons connected with each other by blood."

In **Emmanuel Magembe and others vs. Republic** (Criminal Appeal No. 262 of 2012) [2015] TZCA 389 (8 December, 2015: TanzLII) the Court of Appeal of Tanzania, citing with approval, the case of **Robert Ndecho and another vs. R** [1951] 18 EACA 171, stated that where an accused person is charged with an offence, he may be convicted of minor offence although not charged with it, if that minor offence is of cognate character, that is to say, of the same *genus* and *species*.

Also, in **Richard Estomihi Kimei and another vs. Republic** (Criminal Appeal No. 375 of 2016[2018] TZCA 795 (11 October, 2018: TanzLII), it was held that the substituted offence must be minor and related to the original offence and the accused person should not have been prejudiced in his defence. The Court of Appeal set three major tests before the court enters substituted conviction; they include:

a) *The substituted offence must be legally recognized as lesser offence and of cognate character to the original offence.*

b) *The particulars of the original offence, taken and considered together with the evidence, actually proved every element of the lesser offence.*

c) *The original charge must have given the accused person sufficient notice of the facts constituting lesser or minor offence to enable a fair trial.*

Principally, an accused person charged with a major offence may be convicted of a minor offence if the main offence and the minor offence are cognate; that is to say, both are offences that are related or alike; of the same *genus* or *species*. To sustain such a conviction, the court must be satisfied on two things. **First,** the circumstances embodied in the major charge necessarily and according to the definition of the offence imputed by the charge, constitute the minor offence. **Secondly,** that the major charge has given the accused person notice of all the circumstances constituting the minor offence of which he is to be convicted. (See **Robert Ndecho & Another** (supra) at page 174; **Wachira S/o Njenga vs. Regina** (1954) EA 398); **Richard Estomihi Kimei & Another** (supra).

Spry, J. explained the essence of the first consideration as follows in **Ali Mohammed Hassani Mpanda vs. Republic** [1963] EA 294, while construing the provision of section 181 Criminal Procedure Act, which is now section 300 of the repealed Criminal Procedure Act, envisages a process of subtraction: the Court considers all the essential ingredients of the offence charged, finds one or more not to have been proved, finds that the remaining ingredients include all the essential ingredients of a minor, cognate, offence (proved) and may then, in its discretion, convict of that offence.

The second consideration arises, of necessity, precisely because the accused person is not charged with, and has not pleaded to, the minor cognate offence. The purpose of delving into this consideration is to satisfy the Court that the accused person was not prejudiced, and that by being charged with the major offence, he had sufficient notice of all the elements that constitute the minor offence. (See **Republic vs. Cheya & Another** [1973] EA 500); **Richard Estomihi Kimei & Another** (supra), and **Robert Ndecho & Another** (supra).

It is only after the two key elements are certainly proved that a Court may invoke section 319 of the CPA to convict on the cognate and minor offence. Ascertaining the two key elements ensures that the accused's right to a fair trial, as guaranteed under Article 13(6)(a) of the Constitution, is not curtailed, even in the absence of calling upon the accused to take a plea on the cognate and minor offence. It also insulates the accused from any prejudice whatsoever.

In the present case, the Information to which the accused stands trial indicates plainly in its particulars that on 3rd April 2025 ... the accused formed an intention to instigate the public to effect the obstruction of the 2025 general election, for the purpose of intimidating the executive of United Republic of Tanzania and manifested such intention by his deed of uttering and publishing the following words, to wit *"...wanasema kitu kimoja sahihi*

hapa, wanasema hivi, msimamo huu unaashiria uasi ni kweli ni kweli kwa sababu tunasema tutazuia uchaguzi, tutahamasisha uasi, hiyo ndiyo namna ya kupata mabadiliko... kwa hiyo tunaenda kukinukisha,... sana sana huu uchaguzi tutauvuruga, tutauvuruga huu uchaguzi kwa sababu tunaenda kukinukisha vibaya sana...". As has been constantly indicated in this judgment, the accused did not dispute uttering these words in the presence of CHADEMA leaders, members, supporters, including aspirants of the then forthcoming 2025 general election, and in the presence of the journalists as per the evidence of PW17, DW1, DW2, DW3, DW4 and DW5. According to the evidence, the meeting's proceedings were broadcast for the public to consume.

We have indicated earlier on that it was argued that the video containing those words was not tendered. We agree with the accused. However, we hold the view that, since the accused has all along admitted to uttering them, this means that he intended to instigate the public to commit rebellion, breach peace and tranquility, and commit violence (lawless), and his defence witnesses, including PW17, are trustworthy; we trust that what they said is a correct version of what they saw and heard. In terms of **Goodluck Kyando** (supra), we have no good and sufficient reasons to doubt their credence.

From the foregoing facts, we are of the settled mind that by uttering the impugned words, the accused incited the public to support or participate in obstructing the 2025 general election, through violence, breaching of peace and tranquility, and rebellion. We shall give details of this conclusion hereinafter.

Guided by the principles enunciated in the authorities cited above, it is our firm view that the cognate offence of treason, in our considered view and in the circumstances of this case, is inciting the commission of an offence under section 390 of the Penal Code. This section provides that:

> *390. A person who solicits or incites another to commit an offence commits an offence notwithstanding that the solicitation or incitement has no effect.*

The intent behind section 390 of the Penal Code is prevention and deterrence. It sets two aims. **First,** is interrupting crime at the earliest stage meaning that it intervenes and neutralizes criminal plots at the instigation stage before public harm. **Secondly,** it targets instigators or inciters to remain liable, even if they do not personally execute the physical act.

It is our further interpretation that this provision intends to prevent a clear and present danger that would result from such conduct to which the executive has the right to prevent.

From the above position, the onus is on the prosecution to prove, in our view, three main elements. **First,** the prosecution must explicitly prove

the exact words spoken, written or communicated. **Secondly,** it must demonstrate that the accused actively targeted another person or group to commit a crime. However, do not need to prove that the targeted crime was actually executed. **Thirdly,** *mens rea* (criminal intent). The prosecution must prove that the accused acted with specific, conscious intent to influence, provoke or pressure someone else into committing a distinct legal act.

As we understand section 390 of the Penal Code, it applies broadly to any offence. It is a *"catch all provision"* because it does not name any offence.

From the discussion above and the guiding general principles, we are satisfied that committing the offence of inciting the commission of an offence is a minor and cognate offence of treason with which the accused was charged. We say so because the elements of committing the offence of inciting the commission of an offence are ingrained or subsumed. We have considered section 39(2)(d) of the Penal Code. As plain as it is, it encompasses the intention to instigate, persuade, counsel, or advise another person or a group of persons to achieve a particular purpose. In this case, PW4, PW5, PW7, PW8, PW10, PW11, PW13, and PW14, among others, were incited to commit rebellion, violence, and breaching peace as a purpose intended by the accused to obstruct the 2025 general election. As stated earlier in this judgment rebellion was directed at the Executive.

In view of that, Incitement is expressly incorporated into the statutory language of section 39(2)(d) of the Penal Code and section 390 of the Penal Code. In this sense, incitement forms an integral component of the treason allegation rather than necessarily constituting a separate offence to be charged independently.

On the ingredients of the offences, it is obvious that the offence of treason as per section 39(2)(d) of the Penal Code to be specific and incitement bear similarity in character and emanate from the same root. We find that the offence of incitement is ingrained in the offence of treason. The offence of inciting is, therefore, cognate and minor to the offence of treason.

The relevant evidence implicating the accused in incitement demonstrated that the accused's statements advocating "No Reforms, No Election" and addition of the expressions *"tutazuia uchaguzi," "tutahamasisha uasi," "tutakinukisha,"* and *"tutavuruga uchaguzi"* influenced, motivated, and incited individuals to support or participate in obstructing the 2025 general election, through violence and rebellion. The prosecution relied on the witnesses' reactions, subsequent instigation, discussions and alleged preparations as circumstantial evidence of solicitation and incitement. Although it is not a duty of the defence to prove, it did not explain how the disruption of the general election would be effected.

PW1 and PW16, who investigated this case, told this court that the accused instigated, persuaded, counseled, or advised, mobilised, and incited the public to engage in conduct calculated to obstruct the 2025 general election. Further testimony is that some persons, including PW4, PW5, PW7, PW8, PW10, PW11, PW13, and PW14, after being incited, persuaded and solicited by the accused's speech, planned, and instigated their friends to commit crimes through violence and chaos with the purpose of obstructing the 2025 general election.

PW4 testified that, after watching the video, he encountered people at a coffee place who discussed the statements, with many expressing support for the accused and promising to prevent people from voting on Election Day. He became apprehensive that the statements could lead to chaos, threaten national peace and adversely affect business activities.

PW5 testified that, after watching accused's speech on 4 April 2025 calling for disruption of the 2025 elections in the absence of reforms, he was influenced to join those intending to obstruct the elections through violence. He communicated this intention to Chiza, who allegedly congratulated him, promised to involve him in activities aimed at creating violence, and connect him with other youth groups advocating for change. PW5 also testified about joining the *Siasa Yetu Update* group and participating in activities associated with the "No Reforms, No Election" campaign.

PW7 testified that the accused called for obstructing the 2025 General Election until the demanded reforms were implemented. He stated that the speech inspired him to approach CHADEMA leader Essau Chiza to seek clarification on how the instructions would be implemented.

PW8 stated that the speech, together with the slogan “No Reforms, No Election,” inspired him to instigate fellow youths by circulating the video and encouraging them to support the alleged rebellion.

PW10 testified that he was inspired by the alleged statements and became convinced that he should support them, in part because of his economic hardships. Upon returning to Kwa Morombo, he found Bajaji riders and other people discussing the statements and expressing support for the idea that disruption might improve their lives. PW10 added that the impugned words influenced him and encouraged him to support obstruction of the general election through violence.

PW11 a Bajaji rider testified that the impugned words were discussed by his fellow Bajaji riders and incited them support for obstructing and disrupting the general election.

PW13 testified that after viewing accused’s YouTube statement on 4 April 2025, he circulated the video to CHADEMA-affiliated *bodaboda* riders to influence them to support the accused and obstruct the 2025 General Election. He further alleged that he and other youths planned to stone



persons intending to vote, and that some youths accepted his proposal.

PW14 testified that on 3 April 2025, he watched the accused's Instagram video containing words about causing disorder and obstructing the 2025 General Election. He testified that the speech captivated him and motivated him to support the plan. On 4 April 2025, he discussed the speech with his neighbours and planned to participate in rebellion and engage in violence.

We have scanned their evidence relating on how they interpreted the expressions. Collectively, the witnesses generally interpreted the expressions *"tutazuia uchaguzi," "tutahamasisha uasi," "tutakinukisha,"* and *"tutavuruga uchaguzi"* as conveying an intention to prevent or disrupt the October 2025 general election unless the demanded reforms were made, through obstruction, disorder, chaos, violence, or rebellion. They understood *"tutahamasisha uasi"* as encouraging or inciting others to rebel, while *"tutakinukisha"* was variously understood as causing serious disturbances, inciting violence, or engaging in rebellion. DW5 told this court that in order to avoid the killings, they were ready for the general election to be postponed.

Regarding these witnesses, the accused submitted that, as PW16's evidence indicated, they had been arrested for allegedly planning to commit offences at his instigation, but their charges were subsequently withdrawn and they became prosecution witnesses against him. He argued that they



had substantial interests to serve and, although they denied being threatened by CHADEMA members or leaders, they might have been threatened by the police to testify against him. He, therefore, urged the Court to treat their evidence with caution and not act upon it without independent corroboration, relying on **Abraham Saiguran vs. R** [1981] TLR 265, **Asia Idd vs. R** [1989] TLR 174, **DPP vs. Justice Lumima Katiti** (supra), at pages 13–14, and **Basilid John Mlay** (Supra).

Inasmuch as we agree with the accused that some of the protected witnesses were arrested on allegations of promoting and planning to commit offences at his instigation, and that their charges were subsequently withdrawn, and that they became prosecution witnesses against him, we do not agree with him that all were arrested and turned into prosecution witnesses. For instance, PW4 and PW5 were never arrested by the police, nor were they linked to the planning to commit offences at his instigation. Similarly, PW7 was arrested along with John Heche, Godbless Lema, Chiza and other CHADEMA leaders and members for inciting and planning to instigate violence. His evidence does not show that he was charged and subsequently his charges were withdrawn from Court.

If PW8, PW10, PW11, PW13, and PW14 would have every reason to give false evidence in order to exonerate themselves, their evidence implicating the accused must be treated with care and requires

corroboration. [See **Abraham Saiguran** (supra)]. We have keenly considered the independent evidence of PW4, PW5 and PW7, together with that of PW8, PW10, PW11, PW13, and PW14, and found that the former evidence decidedly corroborates the latter. We hold that the danger of interest to serve the accused sniffed in the evidence of PW8, PW10, PW11, PW13, and PW14 has been properly blown away or deleted by the independent evidence from PW4, PW5, and PW7. We are thus warranted to act upon it, having assured ourselves of its safety.

We have carefully examined Exhibits D1 to D16 and agree with the accused's contention that they contain some material omissions and contradictions. However, as we have already observed, it is undisputed that the accused uttered the impugned words and that those words were disseminated to the public. In our assessment, the identified omissions and contradictions do not undermine the fundamental substance of the prosecution's evidence or displace the central facts established by the evidence. We are, therefore, unable to agree with the accused that those omissions and contradictions had a substantial adverse impact on the prosecution's case.

A crucial issue that must not be overlooked is whether the accused was sufficiently put on notice of the allegations of incitement. We have carefully examined the main charge and are satisfied that it clearly set out

the alleged treasonable intention and the specific words upon which the Prosecution relied. In his testimony, the accused admitted to uttering those words and explained their meaning, context, and intended purpose, not only in relation to the persons who attended the meeting held on 3 April 2025 but also in relation to the wider public through the media, particularly Jambo TV. In our view, the main charge sufficiently apprised the accused of the material facts and circumstances constituting the minor offence, including its essential ingredients. We are further satisfied that the evidence adduced established those ingredients and that the accused was not prejudiced in the conduct of his defence.

Another question for determination is whether the accused defended himself against the allegations of inciting. We have carefully and appropriately examined the record. We have no doubt whatsoever that the accused defended himself properly against the allegations of inciting. In his defence, he admitted having uttered the impugned words but maintained that they were intended to encourage members of the public to demand electoral reforms and pursue peaceful democratic action, including boycotting or postponing the election, rather than to intimidate the Government or incite violence. He further argued that the words were capable of more than one interpretation and had been taken out of the context of his lengthy speech. He also challenged the prosecution’s evidence regarding the meaning and publication of the words, highlighting inconsistencies among witnesses and

the failure to tender the video recording. However, he acknowledged that he intended to instigate people to prevent the election and expressly stated that he had incited people to rebel for that purpose. Thus, his defence disputed the criminal meaning and purpose of the alleged incitement rather than denying uttering the words themselves in public. Nevertheless, in our analysis of the whole evidence before us, we are of the firm view that the accused's speech was explicitly directed to inciting or producing imminent (immediate) lawless actions targeting the 2025 general election and intended to produce such lawless action.

In the event, we invoke our powers under section 319(1) and (2) of the CPA to convict the accused person of incitement under section 390 of the Penal Code.

SENTENCE

We have closely considered both aggravating and mitigating factors. It is not in dispute that the convict is a first-time offender; he is in ill health, being diabetic for six (6) years; and he has been in remand prison for 577 days, a year and seven months, which facts make this court exercise its discretion to determine an appropriate sentence.

However, section 390 of the Penal Code, which creates an offence of incitement, does not provide for the punishment or sentence. For that matter, we resort to section 35 of the Penal Code, Cap 16 (R. E 2023), which



prescribes general sentences, including imprisonment for a term not exceeding five (5) years, fine, or both, where the provision creating the offence does not prescribe a sentence. The provision of the law is quoted below:

> *"35: - When in this Code no punishment is expressly provided for any offence, it shall be punishable with imprisonment for a term not exceeding five years or with a fine or both."*

From the reproduced provision of the law above, the maximum custodial sentence is five (5) years imprisonment depending on the peculiar circumstances of each case.

Besides, it is a matter of law that where the statute provides for a fine, the court is enjoined to impose such sentence in the first instance unless the circumstances do not permit.

In the case at hand, the convict intended to instigate people and he was determined to incite the public to disrupt the 2025 general election, and indeed, some were incited and planned to commit offences of violence against the voters by stoning them. This was a result of the convict's statements that *"…tutahamasisha uasi, tutavuruga uchaguzi, tutazuia uchaguzi, tutakinukisha vibaya sana...".*

These statements or words were calculated to cause breach of peace, state instability and disorder, thus leading to disruption of tranquillity in the

country. We say so because there is no way one can disrupt (*vuruga)* election peacefully. This stance is backed up by the evidence of DW3, DW4, and DW5, who said that they had gone through a lot of injustices in the previous election. So, they were determined to disrupt any attempt to have the 2025 election from taking place. Of particular DW5 said, they were ready to calm down if the election would be postponed. Also, the convict's statement that they would instigate rebellion (*tutahamasisha uasi)* and prevent the holding of the said general election violated other people's rights to participate in the general election and to vote. Under Article 30(1) of the Constitution of the United Republic of Tanzania, 1977, as amended several times, when one exercises his fundamental rights, he shall not curtail the rights of others. We quote the Swahili version:

> *"30(1) Haki na uhuru wa binadamu ambavyo misingi yake imeorodheshwa katika Katiba hii havitatumiwa na mtu mmoja kwa maana ambayo itasababisha kuingiliwa kati au kukatizwa kwa haki na uhuru wa watu wengine au maslahi ya umma".*

All the defence witnesses testified that it could be wrong to interfere with other people's constitutional rights to vote.

Given these circumstances of the commission of the offence of incitement, and the fact that the convict aimed at instigating rebellion, breaching the peace, causing state disorder and taking away people's rights, we are of the firm view that a sentence of fine is inappropriate. Instead, the convict has to be subjected to a custodial sentence to serve as a lesson to



him.

Finally, the convict, **TUNDU ANTIPHAS LISSU** is hereby sentenced for an offence of incitement under section 35 of the Penal Code, Cap 16 (R. E 2023) to serve a term of imprisonment for four (4) years.

Dated at DAR ES SALAAM this 6th of November 2026 .



D. B NDUNGURU

JUDGE OF THE HIGH COURT