

**IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA**

(CORAM: OTHMAN, C.J., RUTAKANGWA, J.A., And LUANDA, J.A.

CRIMINAL APPEAL NO. 31 OF 2009

**LEIYANI MESHKOKI..... APPELLANT
VERSUS**

THE DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT

**(Appeal from the Judgment of the High Court of Tanzania
at Arusha)**

(Bwana, J.)

**Dated the 14th day of May, 2007
in
Criminal Appeal No. 23 of 2007**

JUDGMENT OF THE COURT

7TH & 15TH NOVEMBER, 2011

LUANDA, J.A.:

In the District Court of Monduli sitting at Monduli, the above named appellant was charged with two counts, namely rape and impregnating a school girl. He was convicted on his own plea of guilty and sentenced to thirty years and two years imprisonment respectively. The sentences were ordered to run concurrently.

The appellant was "aggrieved" by both conviction and sentences. He thus appealed to the High Court of Tanzania, Arusha Registry where his

appeal was dismissed after the learned Judge was satisfied, without affording the appellant opportunity of being heard, that the appellant pleaded guilty and that the sentence of thirty years is the bare minimum.

Dissatisfied with the decision of the High Court, he thus appealed to this Court. The main complaint is that he was not given opportunity to present his case.

Ms Javelin Rugaihuruzza learned State Attorney who represented the respondent Republic did not resist the appeal. She submitted that the record shows that the learned Judge after hearing one Mr. Kitambwa learned State Attorney, proceeded to dismiss the appeal without hearing the appellant. That, she went on, goes contrary to one of the principles of natural justice - the right to be heard. In this case it contravened section 366 of the Criminal Procedure Act, Cap. 20 R.E. 2002. She urged us to quash the proceedings of the High Court as they are a nullity and order a re-hearing.

We have carefully examined the record. We agree with Ms Rugaihuruzza that the appellant was not given opportunity to present his case. That goes contrary to one of the principles of natural justice- the right to be heard (*Audi Alteram Partem*). The right of a party to be heard

before a decision is taken is fundamental. Failure to observe the same will render the decision a nullity.

In **Abbas Sherali & Another Vs Abdul S. H. M. Fazalboy** Civil Application No. 33 of 2002 CAT (unreported) this Court observed:

"The right of a party to be heard before is taken against such party has been stated and emphasized by the courts in numerous decisions. That right is so basic that a decision which is arrived at in violation of it will be nullified, even if the same decision would have been reached had the party been heard, because the violation is considered to be a breach of natural justice."

And in this Country the principle of the right to be heard is not only a principle of common law, it has become a fundamental constitutional right enshrined in the Constitution. (See Article 13(6)(a) of the Constitution).

Apart from the Constitution, section 366(1) of the Criminal Procedure Act, cap.20 as correctly cited by Ms Rugaihuza also provides such right when the High Court is hearing an appeal. The Section reads:-

366(1) At the hearing of the appeal, the appellant or his advocate may address the court in support of the particulars set out in the petition of appeal and the public prosecutor, if he appears, may then

address the court and thereafter, the courts may invite the appellant or his advocate to reply upon any matters of law or of fact raised by the public prosecutor in his address and the court may then, if it considers there is no sufficient ground for interfering, dismiss the appeal or may-

(a) N/A

(b) N/A

(c) N/A

Since the appellant was not accorded opportunity to present his case, the decision of the High Court cannot stand. The decision of the High Court is a nullity. The entire proceedings of the High Court is quashed. We order the matter be heard a fresh.

Order accordingly.

Dated at **ARUSHA** this 8th day of November, 2011.

M. C. OTHMAN
CHIEF JUSTICE

E. M. K. RUTAKANGWA
JUSTICE OF APPEAL

B. M. LUANDA
JUSTICE OF APPEAL

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



A handwritten signature in black ink, appearing to be "Z. A. Maruma".

Z. A. Maruma

DEPUTY REGISTRAR