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

**(CORAM: OTHMAN, J.A., MJASIRI, J.A., And JUMA, J.A.)**

**CIVIL REVISION NO. 25 OF 2014**

**HUSSEIN KHAN BHAI……..APPLICANT**

**VERSUS**

**KODI RALPH SIARA…… RESPONDENT**

**(Application from the Order of the High Court of Tanzania at Arusha)**

**(Mugasha, J.)**

**dated the 15th day of August, 2014**
**in**
**Mise. Civil Application No. 105 of 2014**

**RULING OF THE COURT**

**24th & 28th October, 2016**
**MJASIRI, J.A.:**

By a notice of motion filed under section 4 (2) and (3) of the Appellate Jurisdiction Act [Cap 141 R.E. 2002] (the Act), the applicant Hussein Khanbhai is moving the Court for the following orders:-

(1) *To examine and revise the order made by the High Court on August 15, 2014 (Mugasha, J.) which summarily rejected Mise. Civil Application No. 105 of 2014.*

(2) *To direct for the immediate restoration of the application so that the same can be heard on merit.*

The applicant is relying on the following grounds:

(a) *That once an application is admitted and set for hearing, the High Court has no jurisdiction to summarily reject the application.*

(b) *That having set the application for hearing in attendance of the parties, the High Court could not revisit its order and purport to reject the application summarily behind the back of the parties.*

(c) *The law does not require a party applying for leave to appeal in the High Court to attach a copy of the High Court decision against which leave is being sought.*

(d) *The applicant prays for costs of the application for revision.*

The application is supported by the affidavit of Mr. Elvaison Erasmo Maro, learned advocate for the applicant. The sequence of events giving rise to the present application can be summarized as follows. The applicant was the respondent in the High Court Land Appeal No. 78 of 2013. The applicant was aggrieved by the decision of the High Court and lodged a notice of appeal to the Court of Appeal. The applicant subsequently filed Civil Application No. 105 of 2014 seeking for leave to appeal to the Court of Appeal. According to the record the application was set down for hearing on October 22, 2014. The High Court Judge on August 15, 2014 summarily rejected the application without hearing the parties. The parties were not

notified of the date when the learned High Court Judge called the file to summarily reject the application and were as a result both absent.

At the hearing of the application the applicant was represented by Mr. Elvaison Maro, learned advocate and the respondent had the services of Ms. Edna Mndeme learned advocate . Mr. Maro asked the Court to adopt his written submissions. Ms. Mndeme did not object to the application.

Mr. Maro's submissions centred on three issues:-

1. *The parties were condemned unheard.*
2. *The High Court assumed jurisdiction which it did not have.*
3. *The High Court Judge wrongly interpreted the provision of section 49 (3) of the Tanzania Court of Appeal Rules, 2009(the Court Rules).*

On the complaint that the Judge reached at a decision without involving the parties, the law is settled. This Court in its various decisions has emphasised on the right to be heard. In line with the *audi alteram partem* rule of natural justice, the court is required to accord the parties a full hearing before deciding the matter in dispute or issue on merit.

In **Hadmor Productions v. Hamilton** (1982) 1 All E.R 1042 at

p.1055, Lord Diplock stated thus:-

*"Under our adversary system of procedure/ for a Judge to disregard the rule by which counsel are bound, has the effect of depriving the parties to the action of the benefit of one of the most fundamental rules of natural justice/ the right of each to be informed of any point adverse to him that is going to be relied upon by the Judge/ and to be given the opportunity of stating what is his answer to it."*

In the instant case the High Court decided to summarily reject the application without giving an opportunity to the parties to be heard. A denial of a right to be heard, has the effect of vitiating the proceedings. See- **Scan Tan Tours Limited v. The Registered Trustee of the Catholic Diocese of Mbulu,** Civil Appeal No. 78 of 2012 and **Peter Ng'homango v. the Attorney General,** Civil Appeal No. 114 of 2011 (both unreported).

In **Dishon John Mtaita v The DPP,** Criminal Appeal No. 132 of 2004, (unreported) the Court stated :-

*''In the circumstances of this case there was no justification at all for the High Court to hear and determine the appellant's appeal without affording him an opportunity to be heard. Consistent with the settled law, we are of the firm view that the decision of the High Court reached at was in violation of the appellant's*

*constitutional right to be heard and cannot be allowed to stand It was a nullity.*"

The right of a party to be heard was also emphasised in **Abbas Sherally & Another v. Abdul S. H. M. Fazalbay,** Civil Application No. 33 of 2002 (unreported) . It was held as follows :-

> *"The right of a party to be heard before adverse action or decision is taken against such a party has been stated and emphasised by the courts in numerous decisions. That right is so basic that a decision which is arrived at in violation of it all 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.* "
>
> [Emphasis provided] .

In **Mbeya - Rukwa Auto Parts & Transport Limited v. Jestina Mwakyoma,** Civil Appeal No. 45 of 2000 (unreported), this Court in considering the principles of natural justice had this to say :-

> *"In this country natural justice is not merely a principle of common law; it has become a fundamental constitutional right. Article 13 (6) (a) includes the right to be heard amongst the attributes of equality before the law.* "

It is evident from the record that the parties were not heard. The order for the summary rejection of the application was made before the date of the hearing of the application. Given the circumstances, the decision reached by the High Court was a nullity. We are therefore constrained to intervene. As this ground alone is sufficient to vitiate the proceedings, we shall not delve in the remaining two grounds of complaint.

In the result, we invoke our revisional powers under section 4 (3) of the Act, and we set aside the order of the High Court dated August 15, 2014. The High Court is directed to rehear the application in accordance with the requirements under the law. We make no order as to costs.

Order accordingly.

**DATED at ARUSHA** this 25th day of October, 2016

M. C. OTHMAN
**CHIEF JUSTICE**

S. MJASIRI
**JUSTICE OF APPEAL**

I. H. JUMA
**JUSTICE OF APPEAL**

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

J.R. KAHYOZA
**REGISTRAR**
**COURT OF APPEAL**