

**THE UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**IN THE HIGH COURT OF TANZANIA**

**(DISTRICT REGISTRY OF MTWARA)**

**AT MTWARA**

**CRIMINAL APPEAL NO. 85 OF 2020**

*(Originating from Masasi District Court Criminal Case No. 27 of 2019)*

**CHRISTANTUS VICTORY ISSAYA @ SIZA..... APPELLANT**

**VERSUS**

**THE REPUBLIC ..... RESPONDENT**

*Date of hearing: 05/10/2021*

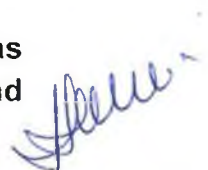
*Date of Ruling: 05/10/2021*

**RULING**

**MURUKE, J.**

Christantus Victory Issaya @ Siza and Abdallah Mohamed Saidi @ Dr. Siri were charged with two counts, both of unnatural offence contrary to section 154 (1) (a) and 154 (1) (c) of the Penal Code Cap.16 R.E 2002 respectively. Both accused pleaded not guilty to the charge. In the cause of trial, Abdallah Mohamed Saidi jumped bail. After closure of prosecution case, appellant did not appear for his defence case. However, (1<sup>st</sup> accused), the appellant was arrested, and was present on the date of Judgment. It is not in records as to whether appellant gave his evidence in his defence. Only at page 6 of the judgment, trial court remarked that;

**“1<sup>st</sup> accused was arrested but his right to defend was denied by time, when he absconded case, while second accused is not obtained todate.”**



Trial court after being satisfied that, prosecution have proved the offence charged, sentence the appellant and 2<sup>nd</sup> accused at trial court for term of 30 years imprisonment. Being dissatisfied appellant filed present appeal on 13<sup>th</sup> August, 2020. Respondent raised notice of Preliminary Objection that appeal is time barred. On the hearing date, Paul Kimweri, represented respondent while appellant was in person.

Respondent, counsel, briefly submitted that Appeal was filed on 13/08/2020, while certified copy of Judgment and proceeding are dated 8<sup>th</sup>/05/2020 being after 65 days from date of certification of judgment and proceedings. Time provided for appeal is 45 days in terms of section 361 (1) (b) of Criminal Procedure Act Cap.20. He thus requested this court to apply section 3 (1) of Law of Limitation act to dismiss the appeal for being out of time. Appellant did not say anything apart from just saying let appeal be heard as it is within time. Before deciding on the Preliminary objections, I have noted with serious concern, that appellant was not given time to defend himself after he was arrested upon jumping bail.

The right for a party to be heard and defend her or his case is a constitutional right and the same cannot be lightly denied. In **Mbeya Rukwa Autoparts and Transport Ltd Vs. Jestina George Mwakyoma, Civil Appeal No.45 of 2000,[unreported]** the Court of Appeal held that:-

**"In this country natural justice is not merely a principle of common law. It has become a fundamental constitutional right. Article 13 (6) (a) include the right to be heard amongst the attributes of equality before the law...". [Emphasis added].**

In **Abbas Sheally and Another Vs. Abdul Fazalboy, Civil Application No.33 of 2002** the same Court of Appeal emphasized that:-



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**"The right of a party to be heard before adverse action or decision 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 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 added].

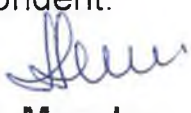
Following the above authority and settled law, it is my considered view that, the decision of the trial court giving rise to this appeal cannot be allowed to stand on account of being arrived at in violation of the constitutional right to be heard. Right to be heard is one of the fundamental principles of natural justice. Failure to hear a party to the dispute is irregularities that goes to the root of the matter. This court cannot leave irregularities to flourish in the court records. Thus, trial court records i.e proceedings and judgment is quashed and set aside. I would ordered re-trial, but same cannot help. Person to have been said to be sodomized by consent has by applicant has jumped bail. It seems he is not interested to proceed with his case, while he was the victim. The offence cannot be proved either in his absence. Re-trial will be a waste of resources of the prosecution and the court. Thus, appellant is set at libert, unless lawful held with other offences. Ordered accordingly.



  
**Z.G. Muruke**  
**Judge**  
**05/10/2021**

Ruling delivered in presence of appellant in person and Paul Kimweri, Senior State Attorney for the Respondent.



  
**Z.G. Muruke**  
**Judge**  
**05/10/2021**