

IN THE HIGH COURT OF TANZANIA
(MTWARA DISTRICT REGISTRY)
AT MTWARA

CRIMINAL APPEAL NO. 56 OF 2021

(Originating from Criminal Case no 25 of 2021 In the District Court of
Kilwa at Masoko)

UWESU YAHAYA NAJUMU.....APPELLANT

VERSUS

THE REPUBLICRESPONDENT

Date of Hearing: 09/03/2022

Date of Judgment: 18/03/2022

JUDGMENT

Muruke, J.

Uwesu Yahaya Najumu, was charged at the District Court of Kilwa at Masoko with two counts, Abduction contrary to Section 133 of the Penal Code, and Rape Contrary to Section 130(1) (2) (e) of the Penal Code, Cap 16 R.E 2019. Upon conviction, was sentenced to 30 years imprisonment on 11 May 2021.

Being dissatisfied, he filed present appeal, raising 8 ground listed in the petition of appeal. On the date set for hearing, Advocate R. Songea represented appellant while Ajuaye Bilishanga, Learned State Attorney represented respondent. By way of Preliminary remarks, Learned State Attorney told this court that, appellant was not fairly tried at the trial court referring this court to page 46 of the trial court proceedings in which appellant (then accused) intended to call his last witness. However trial court noted that witness is not material and more so, such evidence will

not add anything on difference case. Learned State Attorney submitted that, Trial Magistrate pre-empted difference case. More so, appellant (accused) was prevented to call his witness, that is against principal of natural justice. Respondent counsel asked this court to quash conviction, set aside sentence, and order difference case to proceed where it ended before order for judgment. Appellant counsel, argued this court to quash conviction, set aside them sentence on account of fair hearing.

To appreciate none adherence of right to be heard as submitted by Learned State Attorney, last paragraph of page 46 of the typed proceedings is recorded that:

“Also the court does not see the likelihood of that witness giving material evidence on behalf of the accused. On that basis the pursuit by the accused for the court to issue summons or take any step to compel his witness attendance is respected”.

From reproduced part of trial court records, it is obvious, appellant then accused was prevented his right to call witness. More so, trial court pre-empted his intended witness weight to appellant difference. This is contrary to principal of right to be heard.

In the case of Abbas Sherally and Another vs. Abdul S.H.M. Fazal boy, Civil Application No. 33 of 2002 (unreported) it was held that;

“The right of party to be heard before the adverse action is taken against such party has been stated and emphasized by the courts in numerous decisions. That the right is so basic that a decision which is arrived at 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."

This court in the case of **Christantus Victory Issaya @ Siza Vs. The Republic (Criminal Appeal No. 85 of 2020) [2021] TZHC Mtwara Registry**, that;

"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."

The right to be heard is also safeguarded in the constitution. Article 13(6)(a) of the constitution provides in the official version thus;

"(6) kwa madhumuni ya kuhakikisha usawa mbele ya sheria, mamlaka ya nchi itaweka taratibu zinazofaa au zinazo zingatia misingi kwamba-"

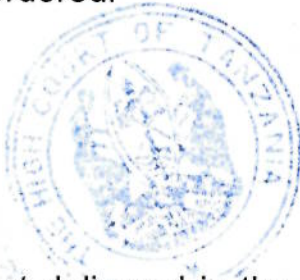
"(a) wakati wa haki na wajibu wa mtu yeyote vinahitajika kufanyiwa uamuzi wa mahakama au chombo kinginecho kinachohusika, basi mtu huyo atakuwa na haki ya kupewa fursa ya kusikilizwa kwa ukamilifu, na pia haki ya kukata rufaa au kupata nafuu nyinginene ya kisheria kutokana na maamuzi ya mahakama au chombo hicho kinginecho kinachohusika."

As rightly submitted by State Attorney, appellant was not fairly tried when trial court typed proceeding reflected that, the matter is coming for judgment, while appellant had not finished his defence. That, by itself vitiate proceedings. Thus, conviction and sentence is unfounded having emanated from improper proceedings. I quash the conviction and set aside sentence, and order hearing of defence

case to proceed with hearing of other witnesses, where it reached before judgment.

Since issue raised by way of preliminary remarks is one of the ground of appeal ground four (4), then same disposes the appeal. Trial court file to be remitted back within 30 days for appellant, then accused, to call his last witness, then trial court proceed with Judgment.

It is so ordered.

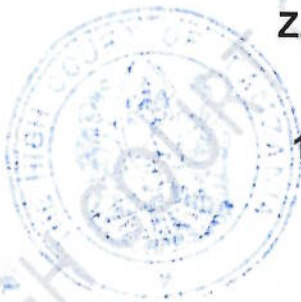



Z.G. Muruke

Judge

18/03/2022

Judgment delivered in the presence of W. Ndunguru State Attorney for the respondent and C. Blanketi advocate for the appellant.




Z.G. Muruke

Judge

18/03/2022