

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

CRIMINAL APPEAL 28 OF 2022

*(Originating from Criminal Case No. 19 of 2022 in the Resident
Magistrate's Court of Mtwara at Mtwara)*

THE DIRECTOR OF PUBLIC PROSECUTIONS.....APPELLANT

VERSUS

HARICK S/O ZAMADIYA 1ST RESPONDENT

DEGHELE MULANA 2ND RESPONDENT

Date of Hearing: 30/03/2022


Date of Ruling: 30/03/2022

RULING

Muruke, J.

Harick Zamadaya and Deghele Mulanda, Ethiopians, on 20th day of January 2022, at Mangaka area within Nanyumbu District, Mtwara Region were found to be unlawfully present, in the United Republic of Tanzania, contrary to section 45(1) (i) and 2 of the Immigration Act Cap 384 R.E 2016. They were charged and pleaded guilty to the offence, thus, convicted and sentenced to serve conditional discharged of twelve months. Same dissatisfied respondent (Republic), thus filed present appeal raising only one ground namely: -

***That the trial court erred in law and fact for sentencing the
Respondents contrary to the Law.***



On the date set for hearing, Kauli George Makasi and Fredrick John Mwanamboje, represented appellant, while respondent were in persons. In the cause of entering coram, respondents were not attentive to the court, immediately court inquired from them. if they understanding the language of the court (English and Swahili. They replied that they are from Ethiopia, meaning that, they do not understand the language and proceedings. This court then, asked how they pleaded guilty to the charge ? were they fairly tried? Appellant counsel Kauli George Makasi quickly replied that, trial was not fairly conducted against the respondent from how they replied.

According to the charge sheet, respondents are from Ethiopia. Records are silent as to whether there was an interpreter, to assist them to whatever language they are conversant with. Failure to have interpreter in the trial court proceedings proves that, respondents who does not understand English or Swahili (the language of the court) is an indication that they were not fairly tried.

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 principal of natural justice.

The right of a party to be heard and defend her or his case is a constitutional right and 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..."

Same principal was discussed in the case of **Abbas Sheally and Another Vs. Abdul Fazalboy, Civil Application No. 33 of 2002** the same Court of Appeal emphasized that:-

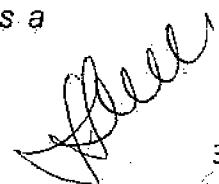
"The right of a party to be heard before adverse action or decision is taken against such party has been stated and emphasized by the courts in numerous decisions. That, right is so basic that a decision which is arrived at in violation of it will nullified even if the same decision would have been reached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

Equally so, in **Scan Tan Tours Ltd vs The Registered Trustees of the Catholic Diocese of Mbulu, (unreported), Civil Appeal No. 78 of 2012**, Court of Appeal of Tanzania held on the same principal that

"We asked ourselves whether the parties, especially the appellant, were denied the right to be heard (audi alteram partem) thereby contravening the rules of natural justice. We insisted that cases must be decided on the issues on record and where new issues not founded on the pleadings are raised, the parties should be given the opportunity to address the Court."

In the case of **Muro Investments Co. Ltd Vs. Alice Andrew Mlela, Civil Appeal No. 72 of 2015 (unreported)** Court of Appeal at Dar es salaam, Hon. Sameji, R. K, JA held 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."



Failure to hear a party to the dispute is irregularities that goes to the root of the matter. This court cannot leave irregularities to flouring in the court records. Thus, trial court records, proceedings and judgment is quashed and sentence set aside.




Z. G. Muruke

Judge

30/03/2022

Ruling delivered in the presence of Kauli George Makasi and Fredrick John Mwanamboje for the appellant and respondents in persons.




Z. G. Muruke

Judge

30/03/2022