

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA

LAND APPEAL No. 13 OF 2018

(Arising from Land Application No.5 of 2016 of the District Land and Housing Tribunal at Maswa)

ANTON GENG.....APPELLANT

Versus

NJOLO KIPIMILO.....RESPONDENT

Date of Last Order: 29/04/2020

Date of Ruling: 14/07/2019

RULING

C. P. MKEHA, J


The appellant had filed an appeal in view of challenging decision of the District Land and Housing Tribunal of Maswa which held that the disputed land is a lawful property of the respondent. The said decision declared the respondent a trespasser. Before the court listed the appeal for hearing, the parties were invited to address the court regarding the manner in which the trial chairperson recorded evidence of the witnesses who appeared before him. The trial tribunal's record indicates that the trial chairperson recorded evidence in the form of questions and answers.

Mr. Frank Samwel learned advocate for the appellant submitted that, the recording of evidence contravened the provisions of Order XVIII Rule 5 of the Civil Procedure Code. In his considered view, the proceedings ought to be quashed.

The respondent who appeared in person could not see any problem regarding the way the trial tribunal recorded evidence. He left the matter for the court to decide.

Order XVIII Rule 5 of the Civil Procedure Code is instructive that evidence should not be recorded in the form of questions and answers but that of narrative. The said provision is couched in mandatory terms. There is no denial that the trial chairperson did record evidence in the form of questions and answers especially during cross examination of each witness. Because of the anomaly highlighted hereinabove, the trial tribunal's proceedings are hereby quashed. The resultant judgment, decree and orders are set aside. Retrial is ordered before another judicial officer of competent jurisdiction. Each party to bear own costs.

Dated at **SHINYANGA** this **14th day of July, 2020.**


C. P. MKEHA
JUDGE
14/07/2020

Court: Ruling is delivered in the presence of the parties.



C. P. MKEHA
JUDGE
14/07/2020