

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF SHINYANGA

AT SHINYANGA

LAND APPEAL NO. 22 OF 2017

(Arising from Land Application No.36 of 2016 of the District Land and Housing Tribunal of Shinyanga at Shinyanga)

MABELA NKINGA.....APPELLANT

Versus

KISHAPU DISTRICT COUNCIL.....1ST RESPONDENT

MABELA MASOLWA.....2ND RESPONDENT

MWAJIGINYA "A" VILLAGE COUNCIL.....3RD RESPONDENT

Date of Last Order: 13/02/2020

Date of Ruling: 13/02/2020

RULING

C. P. MKEHA, J

The present appeal originates from Land Application No.36 of 2016 of the District Land and Housing Tribunal of Shinyanga sitting at Shinyanga. Before the said Tribunal, the appellant claimed as against the respondents, amongst other orders, an order declaring that he (the appellant/applicant) was lawful owner of the suit property. The trial tribunal held against the

appellant's favour. It was particularly held that, the appellant/applicant had failed to establish his case before the tribunal. His application was dismissed with costs.

As a result of the tribunal's decision, the appellant, Mabela Nkinga, preferred the present appeal in view of challenging the decision of the District Land and Housing Tribunal of Shinyanga in Land Application No.36 of 2016. The appeal consists of six (6) grounds of appeal. However, for reasons that will become apparent in this ruling, it serves no useful purpose to reproduce the grounds of appeal.

In the course of reading the trial court's record I noted that the manner in which the witnesses' evidence was recorded was in contravention of Order XVIII Rule 5 of the Civil Procedure code. The trial tribunal's record indicates that the trial Chairperson recorded evidence in the form of questions and answers. That can be easily seen at pages 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28, 29, 30, 31, 32, and 33 of the trial tribunal's record. Upon inviting the parties to comment on the said anomaly, the appellant, who was unrepresented, asked the court to decide the appeal basing on what the law says.

Mr. Kadanga (a legal officer), who appeared on behalf of the 1st Respondent, was of the view that since Order XVIII Rule 5 of the CPC uses the word **shall**, it was inevitable that, an order for retrial ought to be ordered.

Mr. Mpogole (Solicitor for the 1st and 3rd respondents) held a view that in terms of section 45 of the Courts (Land Disputes Settlements) Act, 2002 the decision of the trial tribunal ought not to be altered. According to Mr. Mpogole, the irregularity committed by the trial Chairperson did not occasion injustice to any of the parties.

Mr. Mabela Masolwa (the 2nd respondent), indicated his readiness to accept the court's directives without more.

Section 51(2) of the Land Disputes Courts Act as amended by Act No.2 of 2010, the Written Laws (Miscellaneous Amendments) Act, 2010 provides that, the District Land and Housing Tribunals should apply the Regulations made under section 56 and where there is inadequacy in those Regulations, the tribunals should apply the Civil Procedure Code.

It is not disputed that the Land Disputes Courts (the District Land and Housing Tribunal) Regulations, 2003 do not provide for the manner in

which evidence is to be recorded before Land Tribunals. Therefore resort to the Civil Procedure Code is inevitable. Section 51(2) of the Land Disputes Courts Act (supra) is instructive.


Order XVIII Rule 5 of the Civil Procedure Code provides that:

*"The evidence of each witness **shall** be taken down in writing, in the language of the court, by or in the presence and under the personal direction and superintendence of the judge or magistrate, **not** ordinarily in the form of question and answer, but in that of a narrative and the judge or magistrate shall sign the same".*

The above cited provision is quoted in mandatory terms. It follows therefore that, compliance is obligatory. The trial Chairperson as indicated hereinabove, failed to adhere to the mandatory provisions of the law in taking down evidence in the trial he conducted. Since the final decision was a result of irregularly recorded evidence, the same can not stand.

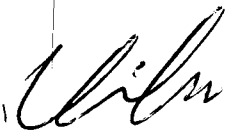
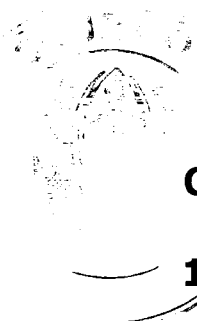
For the foregoing reasons, the trial tribunal's proceedings (commencing from the applicant's case on) are held to be a nullity. The same are quashed. The resultant judgment and decree are set aside. Retrial is ordered. Each party to bear own costs.

Dated at **SHINYANGA** this **13th** day of **February, 2020**.



C. P. MKEHA
JUDGE
13/02/2020

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



C. P. MKEHA
JUDGE
13/02/2020