

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF SHINYANGA**

**AT SHINYANGA**

**LAND APPEAL NO. 77 OF 2016**

*(Arising from Land Application No.18 of 2016 of the District Land and Housing Tribunal at Kahama)*

**NURU MAJID.....1<sup>ST</sup> APPELLANT**

**PETER MASUNGA.....2<sup>ND</sup> APPELLANT**

**VERSUS**

**MOHAMED ISSA.....1<sup>ST</sup> RESPONDENT**

**KITENGE MLINDWA (The administrators of the  
late MLINDWA RASHID).....2<sup>ND</sup> RESPONDENT**

*Date of Last Order: 17/04/2020*

*Date of Ruling: 17/04/2020*

**RULING**

**C. P. MKEHA, J**

Before commencement of hearing on merits of the present appeal, I noted that, the trial chairperson recorded evidence in the form of questions and answers. Being mindful of the mandatory provisions of the law under Order XVIII Rule 5 of the Civil Procedure Code, I opted to draw attention of the parties on the said procedural irregularity. I thus invited them to address

the court on propriety or otherwise of the manner in which the trial chairperson recorded evidence during trial of the suit which resulted in the present appeal.

This morning, the first appellant has told the court that, it was because of the said irregularities, she decided to appeal against the trial tribunal's decision. As to the second appellant, he was of the view that, there ought to be a fresh trial because of the said procedural irregularity.

Mr. Massanja learned advocate who represents the respondents was of the considered view that, since the procedural irregularity committed by the trial chairperson is fatal, an order for trial de novo was inevitable in the circumstances of this case.

As hinted earlier in this ruling, the trial tribunal's record indicates that there was contravention of Order XVIII Rule 5 of the Civil Procedure Code. The trial tribunal's record indicates at pages 12,13,14,17 and 20 that, evidence was recorded in the form of questions and answers. Order XVIII Rule 5 of the Civil Procedure Code provides as follows:


*"The evidence of each witness shall be taken down in writing, in the language of the court, by or in the presence and under 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 couched in mandatory terms hence, compliance is obligatory.

For the sole reason of contravention of mandatory provisions of the law, the trial tribunal's proceedings are hereby quashed. The judgment and resultant decree are set aside. Trial de novo is ordered before another competent chairperson and a different set of assessors. I make no order as to costs.

Dated at **SHINYANGA** this **17<sup>th</sup>** day of **April, 2020**.

  
**C. P. MKEHA**  
**JUDGE**  
**17/04/2020**

**Court:** Ruling is delivered in the presence of the appellants in person and Mr. Massanja learned advocate for the respondents.

  
**C. P. MKEHA**  
**JUDGE**  
**17/04/2020**