

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**IN THE SUB-REGISTRY OF MUSOMA**  
**AT MUSOMA**  
**LAND APPEAL NO 22 OF 2021**

*(Originating from Land Application No 107/2019 in District Land and Housing Tribunal for Mara  
at Musoma)*

**MASUNGA MASANJA KIYUMBI.....APPELLANT**

**VERSUS**

**CONSTANTINE KILANGI .....RESPONDENT**

**RULING**

*22<sup>nd</sup> July & 28<sup>th</sup> September, 2021*

***Kahyoza, J:.***

Constantine Kilangi (Kilangi) sued the Masunga Masanja Kiyumbi (Masunga) and Ngusa ;Masunga (Ngusa) for trespass. The district land and housing tribunal (DLHT) decided in favour of Kilangi. Aggrieved, Masunga appealed to this court raising a number of issues for consideration as follows:-

- 1) Has Masunga been in possession of the suit land since 1997?
- 2) Did the DLHT misdirect itself to award 10 acres of land to Kilangi?
- 3) Was the tribunal's failure to visit the disputed land fatal?

4) Did the chairman of the DLHT fail to analyse and evaluate the evidence?

5) Did the DLHT satisfy itself that Kilangi was legally appointed to administer the deceased's estate?

Briefly, the background is that Kilangi sued Masunga and Ngusa for trespass. He contended that his uncle, **Charles Shilingo Saramba**, died intestate leaving behind a piece of land part of which is the subject of dispute. Following the death of Kilangi's uncle, Masunga and Ngusa trespassed to his land and claimed ownership without any colour of right. Masunga and Ngusa filed their defence. They raised and argued a preliminary objection. The DLHT dismissed Masunga and Ngusa's preliminary objection. Kilangi's case commenced and two witnesses testified in the presence of one person, Masunga or Ngusa. The record does not state who was present. It shows that either Masunga or Ngusa was present when Kilangi (**Pw1**) and Jackson (**Pw2**) testified. Later, Masunga and Ngusa disappeared. They were not present before the DLHT when it heard the evidence of Amos (**Pw3**) and Limbu (**Pw4**). The tribunal decided that the disputed land is the property of Kilangi, the administrator of the late **Charles Shilingo Saramba's** estate.

Masunga and Kilangi appeared before this Court, submitting orally either in support of the appeal or in opposition of the appeal. I will not reproduce their submissions as I will not be able to determine the appeal on merit. Masunga filed the appeal in March, 2021 and the appeal was heard

in July, 2021. From the date the appeal was lodged until the date the Court heard the appeal, the DLHT had not sent the original record. So, we heard the appeal before we were availed with the original record. When, I received the original record, I perused and found out that the chairman of the DLHT did not append a signature after he recorded the evidence of the witnesses.

I decided to summon the parties to address me on the propriety or otherwise of the proceedings. Kilangi's advocate, Mr. Manyama submitted the chairman's to endorse the signature at the end of the testimony of the witness is not fatal. He contended tended that in the era of the principle of overriding objective, courts must be concerned with the substantive justice and not legal technicalities. He insisted that the Constitution of United Republic of Tanzania provides that the courts must not be bound by legal technicalities.

Masunga on his part submitted that the error or omission to append a signature after the witness testified was fatal. He prayed the proceedings to be quashed and the matter heard afresh so that he may be heard.

The record depicts that after Kilangi (**Pw1**), Jackson (**Pw2**), Amos (**Pw3**) and Limbu (**Pw4**) testified the chairman did not append signature. On the date Kilangi (**Pw1**) and Jackson (**Pw2**) Amos testified the chairman signed the order to adjourn the case. He did neither append the signature after Kilangi (**Pw1**) testified or after Jackson (**Pw2**) gave his testimony. The chairman also omitted to sign after he recorded the evidence Amos

(**Pw3**) and Limbu (**Pw4**). It is trite law that failure to append a signature to the evidence of a witness jeopardizes the authenticity of such evidence and it is fatal to the proceedings. See the case of **Joseph Elisha V. Tanzania Postal Bank** Civ. Appeal No. 157/2019 CAT (unreported) where the Court of Appeal reiterated its position in its earlier decisions of **Mhajiri Uladi and Another v. R**, Criminal Appeal No. 234 of 2020 (unreported) and **Chacha s/o Ghati @ Magige v. R**, Criminal Appeal No. 406 of 2017 (unreported); and **Iringa International School v. Elizabeth Post**, Civil Appeal No. 155 of 2019 (unreported), that

*"As demonstrated in this appeal, the testimonies of all witnesses were not signed by the learned trial Judge not only the authenticity of the testimonies of the witnesses but also the veracity of the trial court record itself is questionable. In absence of the signature of the person who recorded the evidence, it cannot be said with certainty that what is contained in the record is the true account of the evidence of the witness since the recorder of such evidence is unknown. On account of such omission, the entire trial court proceedings recorded after the conduct of the preliminary hearing are vitiated because they are not authentic."*

I find that failure to append the signature at the end of each witness statement vitiated the proceedings before the DLHT. I am alive of the provisions of section 45 of **Land Disputes Courts Act**, [Cap. 216], which states that *no decision or order of a Ward Tribunal or District Land and*

*Housing Tribunal shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the proceedings before or during the hearing... unless the error or omission occasioned failure of justice.* I am also alive of overriding objective principle and Article 107A of the Constitution of the United Republic of Tanzania, which simply state that the courts shall dispense justice without being tied up with technicalities which may obstruct dispensation of justice. That notwithstanding, I find it settled that failure to append the signature at the end of the evidence of a witness is fatal irregularity, it occasions failure of justice.

I, therefore, invoke my powers of revision under section 43(1) of the **Land Disputes Courts Act**, (supra) to quash proceedings and set aside the judgment of the DLHT. I return the record to the DLHT to be tried afresh before another chairman with a new set of assessors. Each party shall bear its own costs as there is no party to blame. It is DLHT, which caused the defects.

It is ordered accordingly.



  
**J. R. Kahyoza**  
**JUDGE**  
**28/09/2021**

**Court:** Judgment delivered in the presence of the appellant and Mr. Manyama, the respondent's advocate. B/C Ms. Millinga present.



**J. R. Kahyoza,**

**JUDGE**

**28/09/2021**