

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA - SUB REGISTRY

AT MUSOMA

LAND APPEAL NO 66 OF 2021

*(Arising from Land Case No. 97 of 2016 before District Land and Housing
Tribunal for Mara at Musoma)*

LUCIA GAMBAREKO

(In the administration of the Estate

of the late Juliana W.Gambareko) APPELLANT

VERSUS

BRAND SHURUMBO RESPONDENT

JUDGMENT

2nd June, 2022

F.H. MAHIMBALI, J.:

The appellant in this matter is dissatisfied with the decision of the trial tribunal, has thus preferred this appeal to this Court. She is armed with a total of five grounds of appeal. For reasons to be established soon, the said grounds of appeal are not stated.

During the hearing of appeal today, I invited parties to address the Court on the legality of the trial tribunal's proceedings as lacking appended signature of the trial chairperson.

The appellant being a lay person had nothing useful to address the Court. She just stated that as per the said irregularity, she left it for the Court to decide rightly.

The respondent who was represented by Ms Vicky Mbunda learned advocate, submitted that in her perusal to the trial tribunal record it is obvious that the evidence proceedings lack appended signature by the trial chairperson. She submitted, that was a serious legal violation and invites appropriate court orders of nullifying the same and order accordingly. She added that as there are numerous Court of Appeal's decisions on that, she left it for this Court to rule appropriately as per law.

Considering the legal issue on the authenticity of the DLHT's proceedings in respect of Land case No. 16 of 2016 which is the basis of this appeal, I have decided to address this point exhaustively.

Although the law governing proceedings before the DLHT happen to be silent on the requirement of the evidence being signed, it is still a

considered view of this Court as rightly directed by the Court of Appeal in the case of **Iringa International School Vs. Elizabeth Post**, Civil Appeal No. 155 of 2019 that for purposes of vouching the authenticity, correctness and providing safe guards of the proceedings, the evidence of each witness need to be signed by the Chairperson. On this, inspiration is drawn from the Civil Procedure Code [Cap 33 R.E. 2019] (the CPC) and the Criminal Procedure Act [Cap 20 R.E. 2019] (the CPA) wherein it is mandatorily provided that the evidence of each witness must be signed. Order XVIII rule 5 of the CPC 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 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."[Emphasis supplied]

Further, the Court of Appeal in **Iringa International School Vs. Elizabeth Post** (supra) made reference under section 210(1) of the CPA which provides that:

"S, 210(1) In trials other than trials under section 213, by or before a Magistrate, the evidence of the witnesses shall be recorded in the

*following manner-(a) the evidence of each witness shall be taken down in writing in the language of the court by the magistrate or in his presence and hearing and under his personal direction and superintendence and **shall be signed by him and shall form part of the record*** [Emphasis supplied].

In a countless number of cases including **Yohana Mussa Makubi and Another vs Republic**, Criminal Appeal No. 556 of 2015, **Sabasaba Enos @ Joseph vs Republic**, Criminal Appeal No. 411 of 2017, **Chachas/o Ghati @ Magige vs Republic**, Criminal Appeal No. 406 of 2017 and **Mhajiri Uladi & Another vs Republic**, Criminal Appeal No. 234 of 2020, **North Mara Gold Mine Ltd Vs. Isaac Sultan**, Civil Appeal No. 458 of 2020 (all unreported), the Court of Appeal has insisted that a signature must be appended at the end of the testimony of every witness and that an omission to do so is fatal to the proceedings. In **Yohana Makubi and Another** (supra) the Court held, among other things, that:

"in the absence of the signature of the trial [Judge] at the end of the testimony of every witness; firstly, it is impossible to authenticate who took down such evidence, secondly, if the maker is unknown then, the authenticity of such evidence is put to questions as raised by the

appellants' counsel, thirdly, if the authenticity is questionable, the genuineness of such proceedings is not established and thus; fourthly, such evidence does not constitute part of the record of trial and the record before us"

For reasons that the witnesses before the DLHT gave evidence without the Chairman appending his signature at the end of the testimony of every witness and also on the above stated position of the law, I am of the considered view that the omission vitiated the proceedings of the DLHT. Consequently, in the exercise of the powers of revision conferred in the Court by section 43 (1) of the LDCA, I hereby quash the proceedings of the DLHT. I also set aside the award of the DLHT as well. Lastly, I order that the matter be remitted to the DLHT for the land dispute in question to be heard de novo before another Chairperson with a new set of assessors with expedition. The Deputy Registrar of this Court is hereby directed to expedite the dispatch of the DLHT together with this Court's order for immediate compliance.

Having addressed this issue on authenticity to that much, I have no need to labour on the grounds of appeal as preferred by the appellant. This is because the legal issue is sufficiently capable of disposing of this appeal.

As this issue has been raised by the Court and dully concurred by both parties and learned counsel for the respondent, I make no order as to costs.

It is so ordered.

DATED at MUSOMA this 2nd day of June, 2022.



F.H. Mahimbali

Judge