

IN THE HIGH COURT OF TANZANIA
SHINYANGA DISTRICT REGISTRY
AT SHINYANGA

LAND APPEAL NO. 87 OF 2021

MANGE CHUMA.....APPELLANT
(as the administrator of the estate of the late Chuma Shilinde)

VERSUS

NDOSELA MBASA.....1st RESPONDENT

MIJINGO MBOJE.....2nd RESPONDENT

[Appeal from the decision of the District Land and Housing Tribunal of
Maswa.]

(Hon. J.T. Kaare, Chairman.)

dated the 18th day of November, 2021
in
Land Application No. 24 of 2021

JUDGMENT

24th May & 10th August, 2022.

S.M. KULITA, J.

This is an appeal from the District Land and Housing Tribunal of Maswa. The story behind this appeal in a nut shell is that, the Appellant sued the Respondents at the District Land and Housing Tribunal over 50 acres of land which is situated at Saba Village in Meatu District. In his

testimony, the Appellant claimed that the said land was owned by his late father one Chuma Shilinde Ngelya. He added that, when his late father became sick, in 1995 he handed the same to one Nkuba Ngasa to take care of it. It is his further evidence that, Nkuba Ngasa too became sick and travelled for treatment. During that time, it is when the Respondents invaded the disputed land.

On their part, the Respondents denied to have invaded the Appellants land, rather the 1st Respondent testified to the effect that, he had acquired the land in dispute through clearing a virgin land in 1984 and sold part of it to the 2nd Respondent. Upon that evidence, the trial tribunal found the Respondents the rightful owners of the disputed land, hence dismissed the Appellant's application. That led the Appellant to lodge this appeal, basing on the following two grounds; **One**, that the learned Chairman failed to properly evaluate the evidence adduced by parties, **two**, that the learned Chairman erred by becoming bias to the Respondents.

On 24th May,2022 the matter came for hearing. Mr. Frank Samwel, learned Advocate represented the Appellant, whereas Mr. Daud Masunga, Advocate represented both Respondents.

As the grounds of appeal fault the trial chairman for being bias and for having failed to properly analyze the evidence, I had to carefully go through the entire records.

The records show that, at the trial tribunal each party brought a total number of three witnesses. A notable issue that is glaring upon the testimonies of all witnesses on both parties to the case is that, the Chairman had not been appending his signature after finishing to take down the witnesses' evidence. That is contrary to **Order XVIII Rule 5 of the Civil Procedure Code**. I hereby reproduce it below for easy of reference; -

"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"

While confronted with the same scenario in **Yohana Musa Makubi vs. R, Criminal Appeal No. 556 of 2015** (unreported) the Court of Appeal held that: -

"In light of what the Court said in WALII ABDALLA KIBWITA's and the meaning of what is authentic can it be safely vouched that the evidence recorded by the trial Judge without appending her signature made the proceedings legally valid? The answer is in the negative. We are fortified in that account because, in the absence of signature of trial Judge at the end of 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 question as raised by the appellant's 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 the foregoing reasons, the Court of Appeal went on to hold as follows on the failure by the trial judge to append his or her signature after recording the evidence of each witness: -

"We are thus, satisfied that, failure by the Judge to append his/her signature after taking down the

evidence of every witness is an incurable irregularity in the proper administration of criminal justice in this country. The rationale for the rule is fairly apparent as it is geared to ensure that the trial proceedings are authentic and not tainted”.

The above quoted principle applies to both criminal and civil cases. As the Appellant seeks to challenge the trial tribunal on proper evaluation of the evidence that had been adduced before it. In my view, this ground cannot be determined in the circumstances where the authenticity of the said evidence adduced during the trial is unsafe. For the foregoing reasons, I shall not dwell into determining the appellant’s grounds of appeal.

In the event, I am inclined to exercise the revisionary powers vested to this Court under **Section 44(1)(b) of the Magistrate Court Act [Cap 11 RE 2019]** as I hereby do. I nullify the proceedings of the trial Tribunal from those dated 31st August, 2021. I also quash and set aside the judgment and decree thereon. Consequently, I hereby order **retrial** of the case from the proceedings dated 31st August, 2021. For the interest of justice, it is ordered that the matter be heard before another Chairman

with a new set of assessors. Having considered the circumstances of the case, I make no order as to costs

It is so ordered.



S.M. KULITA
JUDGE
10/08/2022

DATED at Shinyanga this 10th day of August, 2022.



S.M. KULITA
JUDGE
10/08/2022