

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

LAND APPEAL NO. 79 OF 2021

***(Arising from the decision of the District Land and Housing Tribunal for
Mara at Musoma in Land Application No. 4 of 2019)***

BETWEEN

SHIGANYI NYAMHANGA APPELLANT

VERSUS

JACKSON WAMBURA RESPONDENT

JUDGMENT

18th August & 20th September, 2022.

A. A. MBAGWA, J.:

This is an appeal against the decision of the District Land and Housing Tribunal for Mara (the DLHT) in Land Application No. 4 of 2019. The respondent Jackson Wambura successfully sued the appellant, Shiganyi Nyamhanga claiming that the appellant trespassed into his piece of land situated at Bumaswa hamlet in Masurura village within Butiama District in Mara region. Wambura stated that that the suit land measures eight (8) acres.

The appellant contested the application stating that the suit land was his father's property. At the end the DLHT delivered judgment in favour of the respondent Jackson Wambura by declaring him a lawful owner of the suit land.

The appellant was dissatisfied with the decision of the DLHT hence he appealed to this court. His petition of appeal contained five grounds of grievance. However, for the reasons which shall be apparent shortly, I find it irrelevant to reproduce the said grounds of appeal.

When the matter was called on for hearing, both parties appeared in person, unrepresented.

The parties, being laypersons, did not have much to submit before the court. The appellant prayed the court to consider his grounds of appeal and allow his appeal while the respondent submitted that the decision of the trial Tribunal was correct hence, he beseeched the court to dismiss the appeal with costs.

In the course of composing judgment, I noticed that the trial chairman was not appending his signature after recording the evidence of the witnesses for both parties. I thus summoned and asked the parties to address the court on whether the irregularity contravenes Order VIII Rule 5 of the Civil Procedure Code, Cap 33 [R.E 2019] (the CPC) and its consequential effects.

In their reply both parties had nothing to comment on the issue raised by the court ***suo moto***. They just left it to the court to decide what is just.

Having scanned the trial tribunal record, I am of the view that the issue pertaining to authenticity of the evidence adduced by the witnesses for both parties is capable of disposing of this appeal.

The DHLT exercises its duty in accordance with the Land Disputes Courts Act [Cap. 216, R.E. 2019) (the LDCA) and the Land Disputes Courts (the District Land and Housing Tribunal) Regulations, 2003. However, both legislations do not have provisions regarding the recording of evidence. Therefore, in terms of section 51 (2) of the LDCA, the Civil Procedure Code (CPC) applies. Now, looking at the CPC, the procedure for recording evidence is provided for under Order XVIII, R. 5 which is reproduced hereunder:

"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 said provision makes it clear that, the evidence of each witness must be taken down in writing by or under the personal direction of the judge or magistrate in a narrative form. The judge or magistrate is required to

sign the evidence of each witness. The provision is couched in mandatory form. Thus, it must be complied with.

The rationale of requiring the trial judge or magistrate to sign the evidence of each witness is to authenticate the recorded evidence. This position was underscored in **Yohana Musa Makubi vs R**, Criminal Appeal No. 556 of 2015 when the Court of Appeal held that: -

"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."

From the above position, failure by the trial judge or magistrate to append his/her signature after recording the evidence is fatal and therefore necessarily vitiates the proceedings. See also the case of **Joseph Elisha vs Tanzania Postal Bank**, Civil Appeal No. 157 of 2019 CAT at Iringa.

Reverting back to the case at hand, it is evident that throughout the trial tribunal proceedings the learned trial chairman did not append his signature after recording the evidence of PW1, PW2, PW3, PW4, DW1, DW2, and DW3. Thus, in the light of the above decision, the authenticity

of the evidence adduced during the trial is questionable. The omission by the trial chairman to append his signature after recording the evidence of the witnesses is an incurable irregularity. Consequently, the proceedings of the tribunal from 22nd September, 2020 when PW1 started to adduce his evidence onwards is a nullity. In a similar vein, the judgment is also a nullity as it resulted from nullity proceedings.

In consequence, I nullify the proceedings of the trial Tribunal starting from 22nd September, 2020, quash and set aside the judgment and decree. Since this ground suffices to dispose of the appeal, I will not dwell into determining other grounds of appeal.

In the result, I order a retrial of the case starting from the proceedings of 22nd September, 2020.

For the interest of justice, it is ordered that the matter be heard before another chairman and a different set of assessors. Considering that the ground on which the appeal has been disposed of was raised by this court *suo moto*, I make no order as to costs.

It is so ordered.

Right of appeal is explained.




A. A. Mbagwa

JUDGE

20/09/2022

Court: The judgment has been delivered in the presence of both parties
this 20th September, 2022.


A. A. Mbagwa

JUDGE

20/09/2022