

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

**MUSOMA DISTRICT REGISTRY**

**AT MUSOMA**

**LAND APPEAL NO. 89 OF 2021**

*(Arising from the Decision of the District Land and Housing Tribunal for Mara  
at Musoma in Land Application No. 234 of 2016)*

**BETWEEN**

**GOODLUCK JOSHUA..... 1<sup>ST</sup> APPELLANT**

**SAFI MUGIRE.....2<sup>ND</sup> APPELLANT**

**VERSUS**

**COSMAS MAGOMA..... RESPONDENT**

**JUDGMENT**

*30<sup>th</sup> March & 04<sup>th</sup> April, 2022*

**A. A. MBAGWA, J.**

This is an appeal against the decision of the District Land and Housing Tribunal for Mara (DLHT).

The appellants, Goodluck Joshua and Safi Mugire sued the respondent, Cosmas Magoma for encroaching their land which is allocated within the Municipality of Musoma.

The appellants stood the solo witnesses of their case while the respondent testified as DW1 and in addition called other four (4) witnesses namely, Magesa Kasarangi (DW2), Nyagore Rupirya (DW3), Belias Bwanjiga (DW4) and Charle Kare (DW5).

It appears the parties to this case are neighbours. As hinted above, the appellants' substantive complaint was that the respondent trespassed into their respective pieces of land.

In contrast, the respondent disputed the appellants' contentions. He stated that the suit land belongs to him. He called Magesa Kasarangi from whom he bought the land in dispute who testified that he was a lawful owner of the suit premises before he disposed of the same to the respondent.

Upon hearing the evidence of both parties, the Hon. Tribunal Chairman found that the appellants failed to prove their case. He was thus of considered views that the respondent managed to establish that he was the lawful owner of the suit land. Consequently, the trial Tribunal declared the respondent, Cosmas Magoma a rightful owner of the land in dispute and dismissed the case.

Aggrieved by the decision of the DLHT, the appellants knocked the doors of this Court. They file a petition of appeal containing the following grounds;

1. That the Tribunal erred both in law and fact by declaring the respondent as rightful owner of the disputed land basing on insufficient and contradictory evidence

2. That the trial Tribunal erred both in law and facts by failure to consider the evidence given by the appellants
3. That the trial Chairman did not append signature after taking down the evidence of witness

When the matter came before me for hearing, the appellants were represented by Thomas Makongo, learned advocate whilst the respondent appeared in person, unrepresented.

Mr. Makongo preferred to submit on the third ground of appeal only for the reason that it was sufficient to dispose of the appeal. Mr. Makongo said that he thoroughly went through the handwritten proceedings of the trial Tribunal and found that all the evidence adduced was not authenticated. He expounded that the trial Chairman was not appending his signature at every end of the witness' testimony. The appellants' counsel submitted that the omission was a fatal irregularity as it was contrary to the mandatory dictates of the law. To back up his argument, the counsel referred to the case **Masumbuko Makeleze @ Kosovo vs the Republic**, Criminal Appeal No. 433 of 2017, CAT at Mwanza. Finally, Mr. Makongo prayed the Court to quash the proceedings and set aside the judgment of the trial Tribunal and consequentially order trial de novo.

In response, the respondent, being a lay person, had nothing to comment given that the ground was on pure point of law.

On my part, I laboured to go through the record of appeal in particular the proceedings before the trial Tribunal. It is true that all the evidence of seven witnesses who testified before the trial Tribunal was not authenticated by the trial Chairman. The trial Chairman was not appending his signature at the end of each witness' testimony. In the case **Joseph Elisha vs Tanzania Postal Bank**, Civil Appeal No. 157 of 2019 (unreported) the Court of Appeal held that the procedure to append signature is necessary to safeguard the authenticity and correctness of the record.

It is common cause that evidence which is not authenticated cannot be relied upon to make findings for it is uncertain whether what is seen in the record is a true account of the witness. As such, there is no gainsaying that decision which emanates from unauthenticated evidence is a nullity. See **Unilever Tea Tanzania Limited vs David John**, Civil Appeal No. 413 of 2020, CAT at Iringa.

Since the evidence in this case was not authenticated (not signed by the trial chairman), it goes without saying that both the proceedings and the resultant judgment were nothing but a nullity.

In consequence, I nullify the proceedings and set aside the judgment of the District Land and Housing Tribunal for Mara. Accordingly, I order the trial Tribunal to hear the matter afresh (trial de novo). As the error upon which the appeal has been decided was caused by the Tribunal, I order no costs.

In the upshot, the appeal is allowed.

It is so ordered

Right of appeal is explained.



  
**A. A. Mbagwa**

**JUDGE**

**13/05/2022**

Court: The judgment has been delivered in the presence of both parties this

13<sup>th</sup> day of May, 2022.

  
**A. A. Mbagwa**

**JUDGE**

**13/05/2022**