

THE UNITED REPUBLIC OF TANZANIA
(JUDICIARY)
THE HIGH COURT- LAND DIVISION
(IN THE SUB REGISTRY OF MUSOMA)
AT MUSOMA

LAND APPEAL CASE No. 116 OF 2021

*(Arising from the District Land and Housing Tribunal for Mara at Musoma
in Land Application No. 216 of 2018)*

GISENA GIKARO APPELLANT

Versus

ANASTAZIA STEPHANO RESPONDENT

JUDGMENT

02.03.2023 & 02.03,2023
Mtulya, J.:

This appeal was scheduled today for hearing. However, before hearing proceedings could take its course, **Mr. Ostack Mligo** and **Ms. Maula Tweve**, learned counsels for **Anastazia Stephano** (the respondent) raised up and prayed to consult the record of the **District Land and Housing Tribunal for Mara at Musoma** (the tribunal) in **Land Application No. 216 of 2018** (the application) between the respondent and **Mr. Gisena Gikaro** (the appellant).

After perusal of the record, Mr. Mligo had brief conservations and discussions with **Mr. Thomas Manyama Makongo**, learned counsel for the appellant. Finally, Mr. Mligo prayed the proceedings and judgment of the tribunal in the application be

quashed for want of proper application of Order XVIII Rule 5 of the **Civil Procedure Code [Cap 33 R.E 2019]** (the Code). In substantiating his prayer, Mr. Mligo stated that learned counsels are officers of this court and need not waste precious time of the court where there is vivid breach of the law.

In supporting the prayer, Mr. Mligo submitted that the learned Chairman of the tribunal in the application had declined to append signature on every end of the witnesses' testimonies during the hearing of the application in the tribunal. Mr. Mligo's opinion is to the effect that the decline to fix signature at the end of witness testimony offends the mandatory provision in Order XVIII Rule 5 of the Code. Replying the submission of Mr. Mligo, Mr. Makongo stated that, Mr. Mligo has conceded ground number three (3) of the appeal, and the cited irregularity is gross that this court cannot close its eyes to leave it on the record.

I have had an opportunity to scan the record of the tribunal in the application and grasped submissions of learned counsels of the parties and found them to be vivid on the record. The law enacted in Order XVIII Rule 5 of the Code provides, in brief that:

...the evidence of each witness shall be taken down in writing...in that narrative and the judge or magistrate shall sign the same:

In the present appeal, the record shows that on 26th July 2019, when the application was scheduled for hearing to 28th September 2021, when the hearing proceedings completed, no any witnesses' statements which were signed at the end of the testimonies by the chairman to authenticate the evidences. This is oblivious breach of the law in the Code. I am aware this is a land dispute regulated by **Land Disputes Courts Act [Cap. 216 R.E. 2019]** (the Act) and **Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003 GN. No. 174 of 2003** (the Regulations). However, the indicated enactments are silent.

This court is empowered under section 51 (2) of the Act, to invite and use provisions of the Code in civil matters where there is *lacunae* in the Act and Regulations. The practice of borrowing texts from the Code or any other statute has been cherished in a bunch of decisions of this court and the Court of Appeal (see: **Joseph Elisha v. Tanzania Postal Bank**, Civil Appeal No. 157 of 2019; **Mhajiri Uladi & Another v. Republic**, Criminal Appeal No. 234 of 2020; **Chacha Ghati @ Magige v. Republic**, Criminal Appeal No. 406 of 2017; **Iringa International School v. Elizabeth Post**, Civil Appeal No. 2019; and **RATCO Company Limited v. Salim Said Salim**, Labour Revision No. 5 of 2020). With available remedies in such circumstances, the reply is found at page 8 of judgment of

the Court of Appeal in the precedent of **Joseph Elisha v. Tanzania Postal Bank** (supra), that:

In the event, the failure by the arbitrator to append signature at the end of each witness's testimony vitiated the proceedings ...we proceed to quash the proceedings and set aside the award.

The reasoning of the Court in arriving at the decision is displayed at the same page in the following words:


As demonstrated in this appeal, the testimonies of all witnesses were not signed...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 signature of the person who record 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 proceedings recorded...are vitiated because they are not authentic.

In the end, I have decided to quash the decision and set aside the entire proceedings of the tribunal in the application for want of proper application of the law in the indicated Order and

precedents of the Court of Appeal. I order no costs in the present appeal, as the wrong was committed by the tribunal, not the parties, and in any case Mr. Mligo, Mr. Makongo and Ms. Maula acted as officers of this court in searching justice to the parties. If any party is still interested in the contest, he may wish to lodge a land dispute in appropriate forum in accordance to the current laws and procedures regulating land disputes.

Ordered accordingly.




F. H. Mtulya

Judge

02.03.2023.

This Judgment was delivered in Chambers under the Seal of this court in the presence of the appellant, Gisena Gikaro and his learned counsel, **Mr. Thomas Manyama Makongo** and in the presence of **Mr. Ostack Mligo** and **Ms. Maula Tweve**, learned counsels for the respondent.


F. H. Mtulya

Judge

02.03.2023.