

IN THE HIGH COURT OF TANZANIA
SHINYANGA DISTRICT REGISTRY
AT SHINYANGA

LAND APPEAL NO. 64 OF 2021

LIMI SITA.....APPELLANT

VERSUS

1. HABIA JOHN GUGA
2. JOSHUA KIYAYA
3. EMMANUEL LIMBU }**RESPONDENTS**

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

(Hon. J.F. Kinyerinyeri, Chairman.)

dated the 16th day of November, 2021
in
Land Application No. 33 of 2018

JUDGMENT

20th Sept, 2022 & 9th May, 2023.

S.M. KULITA, J.

This is an Appeal from the District Land and Housing Tribunal for Maswa. The story behind this appeal in a nut shell is that, the appellant sued the respondents at the District Land and Housing Tribunal for Maswa over a house situated on Plot No. 606 Block "A" at Malambo, Maswa in

Simiyu Region. In her testimony before the tribunal, the appellant stated that the 2nd respondent is her husband who sold the suit premise to the 1st respondent without her consent. In his part the 2nd respondent told the tribunal that, the suit land was of his son who is the 3rd respondent. He went ahead contending that, it was not him who sold it but the 3rd respondent. In the final analysis the trial tribunal found out that, the disputed land belongs to the 1st respondent.

That decision aggrieved the appellant herein, hence appealed to this Court with four grounds of appeal. But all of them revolve into only two grounds as follows; **first**, improper evaluation of evidence and, **secondly**, the Assessors' opinion were not given before delivery of the judgment.

For the first ground of appeal, as far as the laws of the country are concerned, for whatever way it takes, position is that this being the first appellate court, it has the duty of stepping into the shoes of the trial court and reevaluate the evidence in record in case it finds any fault in the analysis it has made. See, **Future Century Ltd vs. Tanesco, Civil Appeal No. 5 of 2009, CAT at DSM** where it held;

"This is a first appeal. The principle of law established by the Court is that the appellant is entitled to have the

evidence re-evaluated by the first appellate court and give its own findings"

It is not in dispute that, this case was heard and determined by the District Land and Housing Tribunal which exercises its duties in accordance with the Land Disputes Courts Act [Cap. 216 RE 2019] and the Land Disputes Courts (the District Land and Housing Tribunal) Regulations, 2003. However, both legislations do not have provisions on the mode of recording evidence. Therefore, in terms of **section 51 (2) of the Land Disputes Courts Act**, the **Civil Procedure Code [Cap. 33 RE 2019]** on that matter should apply. In the Civil Procedure Code, the procedure for recording of evidence is provided for under **Order XVIII, R. 5** which is reproduced as 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."

Upon going through the trial tribunal's proceedings particularly at pages, 17, 27 and 30 I have noticed that the witnesses' statements were not recorded in a narrative form, particularly in the cross examinations whereby the Chairman used to record the evidence shortly on answers only, which makes its understanding difficult without knowing what the question was. Some of those statements, to mention a few, include;

"I shifted from Bundiri to Bariadi Town" page 17

"He claimed the ownership of the same" page 17

"It was the property of the said Emmanuel Limbu" page 27

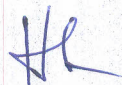
"The Applicant has refused" page 27

"It is the house of the 3^d Respondent" page 30

For such recordings, this appellate court cannot be in a position to know as to what was the question that led to such short answers seen in the record. I find it a serious irregularity done by the trial Tribunal.

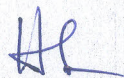
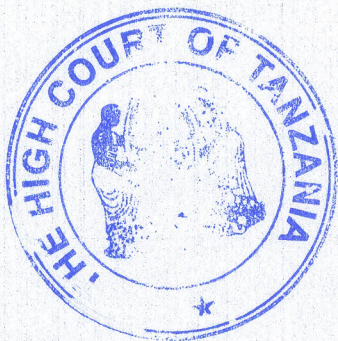
In the event, I hereby nullify the entire proceedings and quash the judgement of the trial tribunal and subsequent orders thereto. The Appellant herein who was the Applicant in the Tribunal, if still interested with the matter, is at liberty to institute a fresh suit before the Tribunal, subject to the law of limitation. In case the matter is re-filed, it should be

entertained by another Chairperson with a new set of Assessors. I make
no order as to costs.



S.M. KULITA
JUDGE
09/05/2023

DATED at **SHINYANGA** this 9th day of May, 2023.



S.M. KULITA
JUDGE
09/05/2023

