

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA**

CONSOLIDATED LAND APPEAL NO. 70 & 79 OF 2021

(Arising from Land Application No. 58 of 2010 of Maswa District Land and Housing Tribunal)

HANGI MAYENGA 1st APPELLANT

MADUHU MAYENGA 2nd APPELLANT

Versus

**EZEKIEL GALANI MAHUJE (Administrator
of Estates of late SILYA MAHUJE MAGESE) 1st RESPONDENT**

JAPHET MADUHU 2nd RESPONDENT

MADUHU MAHEGA 3rd RESPONDENT

MASUNGA SWEKA 4th RESPONDENT

TABU MIGANYA 5th RESPONDENT

Date of Last Order: 08/5/2023

Date of Ruling: 08/05/2023

RULING

S.M. KULITA, J.

This is an appeal from Maswa District Land and Housing Tribunal. It has been scheduled for hearing today, 8th May, 2023. However, in my perusal over the original case file, particularly on the proceedings dated 30/11/2020, 33/06/2021 and 28/06/2021 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 it difficult for this appellate court to know what the question was. Some of those statements, to mention a few, include the following;

"The disputed land" which was the cross-examination response by PW3 on the 30th November, 2020.

"It was not your property" which was the cross-examination response by DW1 on the 23rd June, 2021.

"It is located at Isanya Village" the cross-examination response by DW2 on the 28th June, 2021.

Before hearing the appeal on merit, I asked the parties to address me on that.

Upon inviting the parties to address the court on that issue, they had nothing to comment as they are laymen and neither of them was represented by Advocate. They just left the issue to court for its necessary orders.

The fact that both parties to the case do not dispute that the proceedings of the trial tribunal is incurable defective for the witnesses' statements not being recorded in a narrative form, the said proceedings are

hereby declared a nullity for colliding with the requirement of Order XVIII, Rule 5 of the Civil Procedure Code, hence nullified. For easy of reference, the said **Order XVIII, Rule 5 of the Civil Procedure Code**, provides as I hereby quote;

*"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" (emphasis is mine)*

For such defective mode of recording the witnesses' testimonies, this appellate court cannot be in a position to exactly 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.

Be it noted that position of the law is that, this being the first appellate court, has a duty of stepping into the shoes of the trial court and re-evaluate the evidence in record, in case it finds any fault therein including the analysis

of evidence made thereon. See, **Future Century Ltd V. Tanesco, Civil Appeal No. 5 of 2009, CAT at DSM** in which it was 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"

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 provide 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] should apply. In the **Civil Procedure Code**, the procedure for recording of evidence has been provided under **Order XVIII, Rule 5** (supra) whose citation has been made herein before, that, it should be in a narrative form.

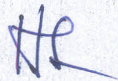
That being the case, I hereby nullify the entire proceedings and quash the judgement of the trial tribunal and the subsequent orders made thereto. The Applicant in the trial tribunal, **EZEKIEL GALANI MAHUJE**

(Administrator of Estates of the late SILYA MAHUJE MAGESE) if still interested with the matter, is at liberty to institute a fresh suit before the Tribunal, subject to the requirements of the Law of Limitation Act. It is further ordered that in case the matter is re-filed, it should be entertained by another Chairperson with a new set of Assessors. As the said defect in the proceedings is the fault of the trial tribunal, the matter is hereby **struck out** with **no order as to costs** against any party.



S.M. KULITA
JUDGE
08/05/2023

DATED at SHINYANGA this 8th day of May, 2023.



S.M. KULITA
JUDGE
08/05/2023

