

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

LAND APPEAL No. 06 OF 2023

*(Originating from the decision of Maswa DLHT in Land Application No.
41 of 2021)*

COSTA PAMBA LUPANDE APPELLANT

*(Administrator of the Estate
of the late Pamba Lupande)*

VERSUS

FELESI HALAGI

MUSSA ISUNA

MALALA GATIGULA

SAMSON KIDUMU

MARKO ABEL

MWALIMU CHUMU

AYUBU ATHUMAN

HAMIS ATHUMAN

CHARLES ZOZO

GILIJA YOHANA

KULWA BALAJA

MANAMBA BUDEDE

LULYALYA WALAGI

MUNGU ATOSHEGELAGA

PAULO MLEKWA

MGEMA MONGELA

NGASA WALANGI

NGEZI NYANDA

CHMBALO NDAKI

JUJI NYANDA

MBOGOMA

.....RESPONDENTS

JUDGMENT

The appellant claiming land against the respondents, filed land application No. 41 of 2021 at Maswa District Land and Housing Tribunal at Maswa in which his claims were dismissed for want of establishment. Dissatisfied, he has appealed before this Court challenging the decision of the DLHT on five grounds of appeal. For reasons to be known soon, the said grounds of appeal will not be discussed.

When the matter came for hearing today, the appellant was represented by Mr. Geoffrey Tuli, learned advocate whereas the respondents appeared in person save the 9th and 20th respondents who did not enter appearance.

Before hearing of the appeal had commenced, this Court raised a legal concern on the authenticity of the trial tribunal's proceedings upon establishing there was no signature appended at the end of each witness's evidence as required by law pursuant to **Order XVIII, R. 5** of the CPC, R.E 2019. I then tasked the parties to address me on that legal issue and the best way forward.

On his part, Mr. Tuli for the appellant upon a careful scrutiny of the trial tribunal's records and its proceedings, he submitted that it is true that

the evidence recorded from the all witnesses, establish that there was no signature appended after the testimony of each witness. He was thus of the view that the proceedings thereof vitiated the trial of the case. Thus, the trial is a nullity and that it should be quashed forthwith and there be direction of trial *denovo*.

On the part of the respondents, they had nothing useful to submit other than wondering why it happened so, and whether the anomaly had nothing to do with them. They thus left it for the court to decide what is right.

I have thoroughly digested the parties' submissions and the relevant law in command. In essence, the DHLT exercises thier 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 manner of recording of evidence. Therefore, in terms of **section 51 (2) of the LDCA**, is when the CPC comes into application at the DLHTs where there is no Lacuna. Now, looking at the CPC, the procedure for recording of 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.** "*

[Emphasis added].

The said provision makes 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 and **the judge or magistrate is required to sign the evidence of each witness.** The provision is couched in mandatory forms. Thus, it must be complied with. The rationale 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 to the

proceedings (See also the case of **Joseph Elisha vs Tanzania Postal Bank**, Civil Appeal No. 157 of 2019 CAT at Iringa, **Iringa International School Vs. Elizabeth Post**, Civil Appeal No. 155 of 2019, **Unilever Tea Tanzania Ltd Vs Davis Paul Chacha**, Civil Appeal No. 290 of 2029).

Reverting to the case at hand, it is evidenced throughout the trial at the trial tribunal's proceedings that the learned trial chairperson did not append his signature after recording the evidence of PW1, and DW1 – DW30. Therefore, in the light of the above decision, the authenticity of the evidence adduced during the trial is at issue. The omission by the trial chairperson to append his signature after recording the evidence of the witnesses is an incurable irregularity. Therefore, the proceedings of the trial Tribunal from 13th September, 2022 when PW1 started to adduce his evidence is a nullity. It also affected the judgment and decree thereon.

For the foregoing reasons, I shall not dwell into determining other grounds of appeal. In the event, I am inclined to exercise the revisionary powers vested in this Court as hereby do, nullify the proceedings of the trial Tribunal starting from 13th September 2022, quash and set aside the judgment and decree thereon. Consequently, I order a retrial of the case starting from the proceedings of 13th September 2022.

For the interest of justice, it is ordered the matter be heard before another chairman and a different set of assessors. Considering the issue

that dispose the case has been raised by the Court suo moto, I make no order as to costs.

DATED at SHINYANGA this 1st day of August, 2023.

F. H. MAHIMBALI

JUDGE

Judgment delivered today the 1st day of August, 2023 in the presence of Mr. Tuli learned advocate for the appellant, the respondents (save the 9th and 20th respondents); and Ms Beatrice, RMA, present in Chamber Court.

Right of appeal explained.



F. H. MAHIMBALI

JUDGE