

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA SUB REGISTRY

AT ARUSHA

LAND APPEAL NO. 99 OF 2022

(C/F the Decision of Karatu District Land and Housing Tribunal, Land Application No.
22 of 2020)

BONEVENTURE BENEDICT.....APPELLANT

VERSUS

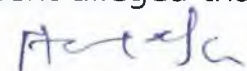
FATUMA ZUBERI JUMA..... RESPONDENT

JUDGMENT

21/08/2023 & 06/11/2018

MWASEBA, J.

Boneventura Benedict, the appellant herein filed an application at the District Land and Housing Tribunal (DLHT) of Karatu at Karatu claiming to be declared the lawful owner of the disputed land' Located at Plot No. 271 Block "J" Bwawani Street, Karatu township, Karatu ward in Karatu District within the Region of Arusha. At the trial tribunal the appellant alleged that he purchased the disputed plot from Felician Baraza and thereafter the plot was transferred to her name. However, in 2019 the respondent trespassed to the disputed plot claiming to be the lawful owner of the disputed plot. On her side, the respondent alleged that she



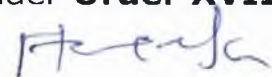
purchased the same from one Leonce Giray Wino in 2009, therefore it is her lawful property.

Having heard the parties and their witnesses together with the documents submitted before it, the tribunal decided that the appellant failed to prove his claim and the application was dismissed with costs. The tribunal declared further that the disputed plot apart from an alley between the appellant's house and the respondent to be the property of the respondent herein. Aggrieved, the appellant is now before this court challenging the decision of the trial tribunal armed with seven (7) grounds of appeal as depicted in the Memorandum of Appeal.

When the matter came for hearing, the appellant was under the legal representation of Mr. Nelson Massawe, Learned State Attorney, while the respondent appeared in person, unrepresented. With leave of the court, the appeal was argued by way of written submissions, which I shall consider herein while determining the grounds of appeal.

Reading from the grounds of appeal, this court is called upon to determine whether the appeal before this court is meritorious or not.

Starting with the 2nd ground of appeal, Mr. Massawe argued that the trial tribunal failed to comply with the requirement under **Order XVIII Rule**

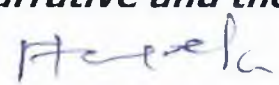


5 of the Civil Procedure Code, Cap 33 R.E 2019. He submitted that the trial Chairman did not append his signature at the end of evidence of each witness as required by **Order XVIII Rule 5 of the CPC** which is mandatory due to the word "Shall" appearing in the provision. He referred this court to the case of **Joseph Elisha v. Tanzania Postal Bank**, Civil Appeal No. 157 of 2019 (Unreported).

On his side, the respondent replied that looking at the records of the trial tribunal there is nowhere the witness's testimony was altered, reduced, or modified, and the compliance of append his signature was complied with. Thus, this ground has no merit.

Having gone through the proceedings of the trial tribunal, this court do agree with Mr. Masawe learned counsel that the trial Chairman did not append his signature after taking the evidence of witnesses the act which contravened **Order XVIII Rule 5 of the CPC** which stipulates that:

*"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).

The same was held in the case of **John Fortunatus Makoko v. Gph Industries Limited** (Criminal Appeal 108 of 2018) [2021] TZCA 723 (3 December 2021) that:

"In time without number, this Court has held that failure to append signature after recording the witnesses' evidence is a fatal irregularity vitiating the entire proceedings."

See also the case of see **Yohana Mussa Makubi v. Republic**, Criminal Appeal No. 556 of 2015 (CAT- Unreported).

Going through the record, it is undisputed facts that when the Hon. Chairman was recording the evidence of Maria Salaho (PW2) and, the defence witnesses, Fatuma Zuberi Juma (DW1) and Joseph Selestini (DW2), he never appended his signature after recording the witnesses' evidence. Therefore, as per the law, the whole proceedings of the trial tribunal from the date PW2 started to testify are fatal as such requirement is vital for the assurance of authenticity, correctness, and veracity of the witness's evidence. This was well settled by the Court of Appeal in the case of **John Fortunatus Makoko v. Gph Industries Limited** (Supra) that:



"In the absence of such signature, it may be difficult to ascertain the truthiness of the evidence of the witnesses recorded by a person who did not want to commit himself on what he recorded."

See also the decision of **Joseph Elisha v. Tanzania Postal Bank** (Supra).

Being guided by the above cited authorities, I concur with Mr. Massawe learned counsel for the appellant that failure to append signature to the evidence of a witness is fatal to the proceedings and the same ought to be nullified. Therefore, this court finds merit on the 2nd ground of appeal. Since the 2nd ground of appeal is sufficient to dispose of the whole appeal, I find no need to delve into the rest grounds of appeal as that would amount to an academic exercise.

Consequently, I hereby find merit in this appeal and allow it. I proceed to nullify the proceedings of the trial tribunal from 14/7/2021, quash the decree and judgment, and set aside the orders emanated thereof. Further to that, I order that the matter be remitted back to the tribunal for the same to be tried *de novo* before another Chairperson. Each party should bear its own costs.

A handwritten signature in blue ink, appearing to read 'A. M. J.', is located at the bottom right of the page.

Ordered accordingly.

DATED at **ARUSHA** this 6th day of November, 2023.



N.R. Mwaseba
N.R. MWASEBA

JUDGE