

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB - REGISTRY OF SHINYANGA
AT SHINYANGA

LAND APPEAL NO. 38 OF 2022

CRDB BANK PLC.....1ST APPELLANT

YONO AUCTION MART.....2ND APPELLANT

VERSUS

1. DITTI BENJAMINE WAME }RESPONDENTS
2. JOHN CHANGU }

**[Appeal from the Decision of District Land and Housing Tribunal for
Maswa]**

(J.T. Kaare, Chairman)

dated the 19th day of May, 2022
in
Application No. 01 of 2019

JUDGMENT

26th October & 28th December 2023.

S.M. KULITA, J.

This is an appeal from the District Land and Housing Tribunal for Maswa. As it can be gathered from the record, the story behind this matter in a nut shell is that the first respondent herein had taken loan from the first appellant and defaulted to re-pay the same. The 1st appellant then

exercised his power of disposing of the collateral property which was the house situated at Plot. No. 568 Block "C", Nyalikungu in Maswa District. The said collateral was sold to the 2nd respondent in an auction conducted by the 2nd appellant. Having seen that, the 1st respondent instituted this case at the Maswa District and Land Housing Tribunal claiming that, the auction of the collateral property was conducted without adhering procedures of the law. After, hearing the matter, the trial tribunal lastly found that, truly auction was conducted without adhering the lawful procedures, hence, nullified the same and declared the 1st respondent still the lawful owner of the said collateral property.

That decision aggrieved the appellants herein, hence this appeal with 3 (three) grounds. A thorough scrutiny of the ground reveals that, this court is called on to re-evaluate the evidence taken down by the trial Tribunal.

On 24th July, 2023, the appeal was scheduled for hearing through written submissions. Both parties complied with the scheduled orders. Mr. Audax Constantine, Advocate represented the respondents whereas Mr. Gwakisa Gervas Advocate, represented the appellants.

While the other parties submitted only on the merit of the case, in his reply submissions the 1st appellant raised also the issue of procedural

irregularity committed by the trial court. Among the said irregularities is failure of the presiding Chairman to append signature after every witnesses' testimony being recorded. This irregularity has been raised by the 1st respondent after which the appellants had a chance to reply on it. However, the record does not show the appellants to have replied on it. On that account, they cannot later on claim to have been denied their right to be heard. On that note, I proceed to determine on that raised point of irregularity.

The District Land and Housing Tribunal exercises its duty 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]** should apply. Now, looking at the **Civil Procedure Code**, the procedure for recording of evidence is provided for under the provision of **Order XVIII, Rule 5** which is hereunder reproduced;

"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."

The records show that, at the trial tribunal the parties had brought a total number of four witnesses. Notable issue that is glaring upon testimonies of all witnesses on both parties to the case is that, the chairman has not been appending his signature after he had finished to take down the witnesses' evidence. That is contrary to the said **Order XVIII, Rule 5 of the Civil Procedure Code.**

In **Yohana Musa Makubi V. R, Criminal Appeal No. 556 of 2015** (unreported) the Court of Appeal once held that;

"In light of what the Court said in WALI ABDULLA KIBWITA's and the meaning of what is authentic can it be safely vouched that the evidence recorded by the trial Judge without appending her signature made the proceedings legally valid? The answer is in the negative. We are fortified in that account because, in the absence of signature of trial Judge at the end of testimony of every witness: firstly, it is impossible to authenticate who took down such evidence. Secondly, if the maker is unknown then, the authenticity of

such evidence is put to question as raised by the appellant's counsel. Thirdly, if the authenticity is questionable, the genuineness of such proceedings is not established and thus; fourthly, such evidence does not constitute part of the record of trial and the record before us....."

For the foregoing reasons, the Court of Appeal went on to hold as follows on the failure by the trial judge to append his or her signature after recording the evidence of each witness;

"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"

The above-quoted principle applies to both criminal and civil cases. As the appellants herein seek to challenge the trial tribunal on the evaluation of the evidence that it had taken and noted down in the record, in my view, this task cannot be done in the circumstances where the authenticity of the said evidence adduced during the trial is at issue. For

the foregoing reasons, I shall not dwell into determining the appellant's grounds of appeal.

In the event, I am inclined to exercising the revisionary powers vested to this Court under the provision of **section 43(1) of the Land Disputes Courts Act [Cap. 216 RE 2019]**. In doing so, I hereby do nullify the proceedings of the trial Tribunal from 25th May, 2021 to the end. I also quash and set aside the judgment and decree thereon. Consequently, I order for **re-trial** of the case starting from the proceedings dated 25th May, 2021.

For the interest of justice, it is ordered that the matter be heard before another Chairman with a new set of assessors. Having considered the circumstances of the case, I make no order as to costs


S.M. KULITA
JUDGE
28/12/2023

DATED at SHINYANGA this 28th day of December, 2023.




S.M. KULITA
JUDGE
28/12/2023