

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

**LAND APPEAL NO. 81 OF 2021**

*(Arising from Land Application No. 17 of 2020 of Maswa District Land and Housing Tribunal)*

**LUKUNGU MBEBA** (Administrator of Estate

of the **Late MASUNGWA MADUHU**.....**APPELLANT**

**Versus**

**SENI SHADA** ..... **1<sup>st</sup> RESPONDENT**

**DOMA KULWA** ..... **2<sup>nd</sup> RESPONDENT**

**MBEBA GUMEGA** ..... **3<sup>rd</sup> 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, 8<sup>th</sup> May, 2023. However, in my perusal over the original case file particularly at pages No. 13, 17 and 28 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 to understand



without knowing what the question was. Some of those statements, to mention a few, include;

*"The 1<sup>st</sup> and 2<sup>nd</sup> Respondent" page 13*

*"They said they were not heard" page 17*

*"He divided as his property" page 28*

*"The document show" page 28*

*"It was his property" page 28*

*"I just witnessed" page 28*

*"I don't" page 28*

Thus, before hearing the matter I asked the parties to address me on that.

Upon inviting the Advocates for both parties, Mr. Geoffrey Tuli for the Appellant and Mr. Martine Sabini for the Respondents, to address the court on that issue, they all admitted on the presence of such fault in the Tribunal's record. They had the opinion that the proceedings and judgment of the trial tribunal should be declared a nullity and the whole matter be struck out. Further, they sought for the matter to be remitted back to the District Land



and Housing Tribunal for retrial. They find it the only remedy available for the matter.

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. Thus, they should be nullified. For easy of reference, the said of **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 in the analysis made thereon. See, **Future Century Ltd V. Tanesco, Civil Appeal No. 5 of 2009, CAT at DSM** in which it was held;

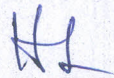
*"This is a first appeal. The principle of law established by the Court is that the appellant is entitled to have the evidence re-evaluated by the first appellate court and give its own findings"*

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] should apply. In the **Civil Procedure Code**, the procedure for recording of evidence has been



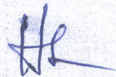
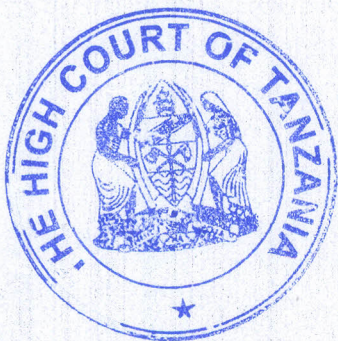
provided under **Order XVIII, Rule 5** (supra) whose citation has been made herein before, that it should be in a narrative form.

In the event, I hereby nullify the entire proceedings and quash the judgement of the trial tribunal and the subsequent orders made thereto. The Appellant herein who was also 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. 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 8<sup>th</sup> day of May, 2023.



**S.M. KULITA**  
**JUDGE**  
**08/05/2023**



