

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

**LAND APPEAL NO. 16 OF 2022**

**MSHIKAMANO SACCOS LTD.....1<sup>ST</sup> APPELLANT**

**SHASHINJALE AUCTION MART &**

**GENERAL TRADING CO. LTD.....2<sup>ND</sup> APPELLANT**

**VERSUS**

**THEREZA KULUNGULA-----RESPONDENT**

**RULING**

*Last Order: 16.02.2023*

*Judgment: 20. 02.2023*

**M.MNYUKWA, J.**

In the District Land and Housing Tribunal of Chato (Tribunal) the respondent successfully sued the appellants. The respondent sought and she was declared that she was not indebted by the first appellant as she had paid the outstanding loan owed by the first appellant, that the first and second appellant are not entitled to sell the properties of the respondent pleaded as a security for loan, the first respondent and his agent is restrained from disturbing the respondent in the enjoyment of

the properties pleaded as a security for loan, that the first appellant is entitled to handover all documents of ownership to the respondent and that the first appellant is responsible to pay costs of the suit.

Aggrieved, the appellants instituted the present appeal before this Court advancing five grounds of appeal. When the appeal was coming for hearing, the appellants were represented by Pauline Michael and the respondent enjoyed the legal services of the learned counsel, Costantine Ramadani. However, after going through the record, I find it pertinent for the counsels of both parties to address the Court on the anomaly found in the records on whether the Chairman of the Tribunal had appended his signature after completion of taking the testimony of each witness.

Submitting first, Mr. Costantine conceded that, if the records of the proceedings is not signed after the completion of witness's evidence is fatal and that defect renders the proceedings and the Judgment nullity and that the remedy is to order re-trial to be done by either a new chairperson or the same chairperson after the court had declared the trial nullity. He refers this Court to the decision of the Court of Appeal in the case of **Geofrey Raymond Kasambula v Total Tanzania Limited**, Civil Appeal No 320 of 2019 (unreported), that, the Court of Appeal held that,



after taking witness's testimony the arbitrator is required to append his signature so as to authenticate the evidence recorded.

Referring to the proceedings of the Tribunal, Mr Costantine submitted that, the proceedings were duly signed as the Chairpoerson appended the signature as reflected on page 23 and 43 of the typed proceedings so as to auntenticate the proceedings. However, he was of the vie that, if the Court find that the signature so appended does not meet the requirement of the law, the said defect is curable under section 45 of the Land Disputes Courts Act, Cap 216 R.E 2019.

He supported his argument on the defect to be cured by the provision of section 45 of the Land Disputes Courts Act, Cap 216 R.E 2019 by referring to the decision of the Court of Appeal in the case of **Yakobo Magoiga Gichere v Peninah Yusuph**, Civil Appeal No 55 of 2017 where the Court insisted on the overriding objective and to do away with procedural technicalities. He therefore prays the Court to use section 45 of the Land Disputes Courts Act, Cap 216 R.E 2019 to cure the anomaly.

Responding, the counsel for the appellants insisted on the use of overriding objective to cure the anomaly as it is provided for under section 45 of the Land Disputes Courts Act, Cap 216 R.E 2019.



From the parties' submissions, it is clear that, they are in agreement that if the Charman did not append signature after the completion of taking the witness's statement, it fatal and it may render the proceedings and the Judgemnet to be declared nullity and its remedy is trial denovo. However, they have gone further by contesting that, the arbitrator appended signature after the completion of taking the witness's testimony and if the court finds otherwise, the anomaly can be cured by the overriding objective by using section 45 of the Land Disputes Courts Act, Cap 216 R.E 2019.

To begin with, I wish to emphasize that, on the question of properly taking the evidence , it is not only about a witness to have testified to support the claim as it includes also the evidence so tendered to be properly taken by adjudicator. In order to authenticate that he had taken the testimony of the particular witness, the adjudicator is duly bound to append his signature after completion of witness's testimony. Thus, the question of appending signature after the completion of witness's testimony is of utmost importance in order to authenticate the evidence so tendered.



It is a settled position of the law that failure to append signature at the end of each witnesses' evidence vitiates the authenticity of the evidence taken. This is the position of the Court of Appeal in the plethora of authorities. In **Geofrey Raymond Kasambula (supra)**. The Court of Appeal quoted its earlier decision in **Chacha s/o Ghati @ Magige v Republic**, Criminal Appeal No 406 of 2017 (unreported) where it stated that;

*"we entertain no doubt that since the proceedings of the trial court were not signed by the trial judge after recording evidence of witnesses for both sides, they are not authentic. As a result. They are not material proceedings in determination of the current appeal."*

In order to satisfy myself with the averment of the counsel for both parties, that the chairman appended signature after completion of the witness's testimony, I revisited the entire proceedings of the Tribunal only to find that the Chairperson appended his signature after giving the tribunal's order and not after the completion of recording the witness's testimony. In other words, the records do not clearly show where the witness's testimony ends as there was no signature that has been appended.



For easy of reference, I find it wanting to reproduce part of the records when PW1 was testifying as it is recorded on page 23 of the Tribunal's Proceedings. The records reads as:

**Mr. Ntaramuka**

*Wakati napewa notisi ya siku 14 nilikuwa nimeshamaliza deni. Jina langu ni Thereza Lusangija Nyororo, nina risiti za kulipa deni na barua ya kuijulisha mahakama kuwa nimemaliza kurejesha mkopo.*

***Wakili Costantine:*** *Hakuna shahisdi Zaidi, tunaomba kufunga ushahidi wetu.*

***Baraza:*** *Kesi upande wa mleta maombi imefungwa rasmi.*

***Wakili Rwechungura:*** *Tunaomba tupangiwe tarehe ya kusikiliza utetezi*

***Amri:*** *Kusikiliza uteuezi 21/7/2021.*

***Colex, B***

***Mwenyekiti***

***14/6/2021***

To my understanding, I don't think for the purpose of authenticate the evidence tendered by the witness the signature is to be appended after giving the final order of the day as the conversations of the counsels



for both parties is not part of the witness's testimony. The same anomaly is also observed on page 34 and 42 of the trial tribunal proceedings.

Taking the stance of the Court of Appeal of which I am bound to follow, it is a matter of practice for a presiding officer in the Tribunal to append signature after completion of witness's testimony. The records also bears testimony that the Chairman did not append signature after the witness finished to testify.

Thus, my mind is settled that, failure of the Chairman to append signature after completion of taking the witness's evidence is fatal which vitiates the proceedings of the Tribunal.

The counsel for the parties are of the view that, the said anomaly can be cured by the provision of section 45 of the Land Disputes' Courts Act, Cap 216 R.E 2019. For easy of reference, I find it pertinent to reproduce the aforesaid section. The section reads:

*"No decision or order of a Ward Tribunal or District Land and Housing Tribunal shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the proceedings before or during the hearing or in such decision or order or on account of the improper admission or rejection of any evidence unless such error, omission or*





*irregularity or improper admission or rejection of evidence has in fact occasioned a failure of justice”.*

With due respect, it is my firm opinion that the said anomaly cannot be cured by the overriding objective since the anomaly goes to the root of the matter as the rules of taking evidence and for it to be admissible and relied upon were not followed which question the authenticity of the evidence so tendered. In the case of **Unilever Tea Tanzania Limited vs David John**, Civil Appeal No. 413 of 2020 the Court of Appeal stated that: -

*"Judgment of any court or quas-judicial tribunal must be grounded on the evidence properly adduced during the trial otherwise it is not a decision at all".*

I therefore invoke the revisional power nullify the proceedings and set aside the Judgement and the Decree of the Tribunal delivered on 11<sup>th</sup> March 2022.

As to the way forward, I further order the matter to be remitted back to the Tribunal for a dispute to be heard denovo by another Chairperson. The Chairperson so appointed should expediate the matter as much as





practicable. Since the anomaly is raised by the Court, I make no order as to costs.

It is so ordered.

Dated at Mwanza this 20<sup>th</sup> day of February 2023



  
**M.MNYUKWA**

**JUDGE**

**20/02/2023**

The right of appeal is explained to the parties.

  
**M.MNYUKWA**

**JUDGE**

**20/02/2023**

**Court:** Judgement delivered on 20<sup>th</sup> February 2023 in the presence of both parties.

  
**M.MNYUKWA**

**JUDGE**

**20/02/2023**