

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
SHINYANGA SUB REGISTRY**

AT SHINYANGA

LAND APPEAL NO. 37/2023

*(Arising from Land Application No.4/2023, before Busega
District Land and Housing Tribunal for Busega at Busega)*

RUTH SHINJIAPPELLANT

VERSUS

BOGOHE IDASORESPONENT

RULING

7th February 2024.

F.H. MAHIMBALI, J

The respondent herein above filed a suit land against the appellant before the DLHT for Busega claiming among others the parcel of land measuring three acres which located at Lutubiga in Busega District for being trespassed by the appellant. The respondent alleged to have bought the disputed land from one Leah Philipo Basondole and Methusela Philipo and thus he has been utilizing it but the appellant has come and claimed to be the owner of the disputed land.

The matter was heard on merit and in final determination, the trial tribunal found that the respondent was the lawful owner of the disputed land.

Aggrieved by such decision, the appellant has approached this court based on three grounds, which are to the effect that the DLHT erred in law and facts in adjudicating the matter without joining the necessary party, there was no strong evidence, and thus there were no assessors' opinions.

When this appeal came for hearing, both parties appeared in person and unrepresented. And before dwelling for determination of the appeal, this court noted one legal issue to be addressed by the parties as it seems to vitiate the proceedings at the trial tribunal. This is on non-signing of the evidence as recorded from the witnesses. For non-signing, that offends the legal requirement under Order XVIII Rule 5 of Civil Procedure Code.

The appellant's response to this was that, she has no any legal option to that effect than to abide to the law and thus she leaves it to the court for appropriate determination. Likely the respondent, pressed the same.

Having heard both parties on the issue raised by this court, I have to rule out. I need to draw inspiration from the Civil Procedure Code Cap 33 R.E. 2019 (the CPC) and the Criminal Procedure Act [Cap 20 R.E., 2019] (the CPA) wherein it is mandatorily provided that the evidence of

each witness must be signed. Order XVIII rule 5 of the CPC provides as follows:

"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 a question and answer, but in that of a narrative and the judge or magistrate shall sign the same. "

Further, under section 210(1) of the CPA it is provided that:

*"S.210(1) In trials other than trials under section 213 by or before a Magistrate/ the evidence of the witnesses shall be recorded in the following manner-
(a) the evidence of each witness shall be taken down in writing in the language of the court by the magistrate or in his presence and hearing and under his personal direction and superintendence and shall be signed by him and shall form part of the record"*

In a countless number of cases including **Yohana Mussa Makubi and Another vs Republic, Criminal Appeal No. 556 of 2015, I**

Sabasaba Enos @Joseph vs Republic, Criminal Appeal No. 411 of 2017, Chacha s/o Ghati @ Magige vs Republic, Criminal Appeal No. 406 of 2017 and Mhajiri Uladi & Another vs Republic, Criminal Appeal No. 234 of 2020, North Mara Gold Mine Limited versus Isack Sultani, Civil appeal No.458 of 2020, (all unreported); the Court of Appeal insisted that a signature must be appended at the end of the testimony of every witness and that an omission to do so is fatal to the proceedings. In **Yohana Makubi and Another** (supra) the Court held, among other things, that:

"In the absence of the signature of the trial Judge at the end of the 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 questions as raised by the appellants' 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"

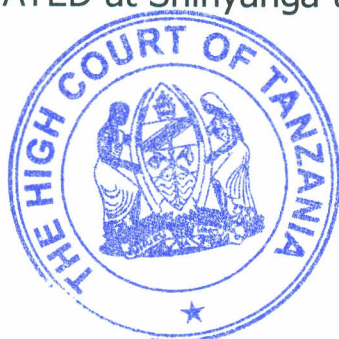
For reasons that the witnesses before the DLHT gave their evidence and the Chairman did not append his signature at the end of the testimony of every witness and also on the above stated position of the law, I find that the omissions vitiated the authenticity of the proceedings of the I DLHT.

On the strength, I am satisfied that the pointed omissions and irregularities amounted to a fundamental procedural error that have occasioned a miscarriage of justice to the parties and had vitiated the proceedings and entire trial before the Tribunal. Therefore, the proceedings from 3rd March 2023 are vitiated and nullified. Similarly, judgement and decree of the trial tribunal thereof are hereby quashed and set aside. For the pointed out legal errors, the matter be remitted to the trial tribunal for retrial by different Hon. Chairman with different set of assessors.

No orders as to costs.

It is so ordered.

DATED at Shinyanga this 7th day of February, 2024.



F.H. Mahimbali
Judge