

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

LAND APPEAL NO. 37 OF 2022

MICHAEL KALEGI MANYANGU (*Administrator*
for the estate of George Manyangu Kalegi)**APPELLANT**

VERSUS

SHILIKALE YUMA.....**RESPONDENT**

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

(J.T. Kaare, Chairman)

dated the 25th day of May, 2022
in
Land Application No. 51 of 2020

JUDGMENT

17th July, 2023 & 30th January, 2024.

S.M. KULITA, J.

This is an appeal from the District Land and Housing Tribunal for Maswa. In a nut shell, the appellant herein instituted a land application against the respondent at the said Tribunal. The appellant alleged that, the respondent was given the disputed land sized 28 acres just for taking

care of it. As the time went by, the appellant wanted the disputed land be remitted back. It was alleged that, surprisingly the respondent came out with a different story, that instead of him being a care taker, he claimed to have had bought the same.

The matter was heard and finally, the trial tribunal found that, the respondent was the lawful owner of the said 28 acres in dispute, that he had bought the same from the appellant.

That decision aggrieved the appellant, hence this appeal with three grounds. A thorough scrutiny of the grounds reveal that, this court is called to re-evaluate the evidence taken down at the trial court.

Before I venture into summarizing the parties' submissions in this appeal, I find it better to address a fatal irregularity which I have noted when I was going through the trial tribunal's record.

It should firstly be born in mind that, the District Land and Housing Tribunal exercises its adjudication duties in accordance with the **Land Disputes Courts [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, 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 **Order XVIII, Rule 5** which is reproduced hereunder;

"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, parties had brought a total number of seven witnesses. Notable issue that is glaring upon the testimonies of PW2, PW3, PW4 and DW3 to the case is that, the Chairman has not been appending his signature after he had finished taking down those witnesses' evidence. That is contrary to the requirement of the said **Order XVIII, Rule 5 of the Civil Procedure Code.**

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

"In light of what the Court said in WALII ABDALLA 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 of 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 appellant’s appeal seeks to challenge the trial tribunal on proper evaluation of the evidence in records, 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.

To add up, the testimony of PW1 has also been taken in violation of the cited rule above of **Order XVIII, Rule 5**, in the sense that it has been taken in the form of questions and answer instead of narrative form, particularly in the Cross-examination and Re-examination. The Chairman used to record just short answers in the proceedings, for the questions put to the witnesses which is fatal, for example; *“the dead person”* (page 7), *“in the year 1997”* (page 7) *“save as to use this”* (page 8), *“to sell”* (page 8), etc.



The said short answers recorded by the Chairman do not give clear meaning, unless you engage into doing the guess work of thinking as to what were the questions that gave rise to the recorded answers seen in the record. In that situation, re-evaluation of evidence becomes difficulty.

In the event, I am inclined to exercise the revisionary powers vested to this Court under **section 43(1)(b) of the Land Disputes Courts [Cap. 216 RE 2019]** as I hereby do, nullify the proceedings of the trial Tribunal recorded from 10th December, 2020 to the end. I also quash and set aside the judgment and decree thereon. Consequently, I order **retrial** of the original case from the date of nullification of the proceedings, 10th December, 2020. For the interest of justice, it is ordered that the matter be entertained by 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
30/01/2024

DATED at **Shinyanga** this 30th day of January, 2024.



S.M. KULITA
JUDGE
30/01/2024