



THE JUDICIARY OF TANZANIA

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA AT SHINYANGA

(CORAM: HON. FRANK MAHIMBALI)

LAND APPEAL NO. 000006122 OF 2024

SAMWEL DEOGRATIUS SALUT COMPLAINANT / APPELLANT / APPLICANT /
PLAINTIFF

VERSUS

JONAS BUTYAL JACKSON RESPONDENT / DEFENDANT

RULING

Fly Notes

witnesses' evidence not appended with a signature of a trial magistrate or judge.

Facts

The appellant unsuccessfully filed a suit at the trial DLHT for a claim of rent amounting 2,000,000/= against the respondent.

Ratio Decidendi

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"

27th of May 2024

Hon. MAHIMBALI.:

Ruling

F.H. Mahimbali, J

27th May 2024

When this appeal came for hearing today, respective counsel raised legal issue on the propriate of the trial court's proceedings that the recorded proceedings on the witnesses' testimony is not appended with signature of the trial chairperson, thus vitiated the authenticity of the proceedings. That the trial chairperson didn't append his signature at the end of the following witnesses' testimony: PW1 (page 12 of the typed proceedings), PW3 (Page 15), PW4 (at

page 17), PW5 (at page 18), PW6 (page 21), DW1 (page 25). As per Order XVIII, Rule 10 of the CPC, read together with GN 760 of 2021 dictates that each trial judge or magistrate to sign at the end of each and every witnesses' testimony. the rationale of this is to authenticate the recorded proceedings. As per this violation, what is deemed as recorded evidence is nothing in the eyes of the law. Thus, prayed that the whole proceedings of the trial tribunal be nullified for want of mandatory legal compliance.

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 a question and answer, but in 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 at 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 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 27th November 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 a different Hon. Chairman with different set of assessors.

No orders as to costs.

It is so ordered.

DATED at Shinyanga this 27th May 2024.



F.H. Mahimbali

Judge

Dated at **SHINYANGA ZONE** this 27th of May 2024.

FRANK MAHIMBALI
JUDGE OF THE HIGH COURT