

**IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND APPEAL NO. 229 OF 2021**

*(Arising from the District Land and Housing Tribunal for Kinondoni at  
Mwananyamal in Land Application No.142 of 2021)*

**ALLY RAMADHANI CHAMLUNGU** (Administrator of the  
estate of the late RAMADHANI SALUM CHAMLUNGU) ... **APPELLANT**

**VERSUS**

**JUMANNE OMARI CHAMLUNGU** ..... **1<sup>ST</sup> RESPONDENT**

**HAMISI OMARI CHAMLUNGU** ..... **2<sup>ND</sup> RESPONDENT**

**OMARY SALUM CHAMLUNGU** ..... **3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

*Date of last Order: 21.09.2022*

*Date of Judgment: 29.09.2022*

**A.Z.MGEYEKWA, J**

The present appeal stems from the decision of the District Land and Housing Tribunal for Kinondoni in Land Application No.142 of 2021. The material background facts to the dispute are; that the appellant lodges a case against the respondents at the District Land and Housing Tribunal

claiming ownership of a piece of land with a Residential Licence No. KND/MKR/JNG7/166 measuring 312 sqm. The appellant claimed that the respondents have illegally invaded and developed the suit land. He testified to the effect that one Ramadhani Salum Chamlungu, this late father is the lawful owner of the suit land in exclusion of his uncle Omary Salum Chamlungu. The appellant prayed for the Tribunal to permanently restrain the respondent or their agents to further illegal invasion, acquisition, and developing the suit premises.

On their side, the respondent denied the claims. They claimed that Omary Salum Chamlungu, the 3<sup>rd</sup> respondent is the lawful owner of the suit land. The District Land and Housing decided the matter in favour of the respondents and dismissed the application with costs.

Aggrieved, the appellant appealed before this court against the decision of the District Land and Housing Tribunal for Kinondoni at Mwananyamala and raised four grounds of grievance, namely:-

- *That the Hon. Chairperson erred in law and fact in holding that the tribunal for failure to analyse the evidence on record and considering the evidence of PW1, PW2, PW3 and PW4 whose evidence were heavier to enable the Tribunal to decide in his favour.*

- *That the Hon. Tribunal erred in law and fact for declaring that exhibits P2 was illegally obtained while exhibits P1 and P2 supported exhibit P2.*
- *That the Hon. Tribunal erred in law and fact for failure to analyse the issues for determination.*
- *That the Hon. Tribunal erred in law and fact in dismissing the appellant's application while the respondent's evidence was weak.*

When the matter was called for hearing on 21<sup>st</sup> September, 2022, the appellant and the respondents were present unrepresented.

In support of the application, the appellant contended that he was dissatisfied with the decision of the District Land and Housing Tribunal, therefore, he decided to file an instant appeal. The appellant argued that the tribunal did not consider the appellant and his witnesses' evidence while their evidence was heavier compared to the respondents. The appellant went on to claim the tribunal claimed that exhibits P2 and P3 were improperly procured. He valiantly argued that he an administrator of the estate of his late father and his relatives were allowed to take photos of the said exhibit. He claimed that Omary Said Chamlungu is his uncle he admitted that he did not pay land rent and had no any cogent document to support his testimony.

In conclusion, the appellant urged this Court to examine the appellant and respondent's evidence and do justice.

The 1<sup>st</sup> respondent submitted that the appellant's father one Ramadhani sold a piece of land to his young brother one Omary Salum. He contended that the 3<sup>rd</sup> respondent is the overseer of the suit premises and 3<sup>rd</sup> respondent was appointed to administer the estate of the late Ramdahni but the appellant decided to construct a house in the suit land and did not want to recognize the respondent as part of the suit land. He stated that the respondent's evidence is heavier and they have right over the suit land.

The 2<sup>nd</sup> respondent forcefully objected the appeal. He reiterated the submission of the 1<sup>st</sup> respondent. He spiritedly argued that the appellant was untrue and tendered illegal; documents which is why the tribunal decided against him. He went on to argue that the appellant tendered a residential license bearing the name of Ramadhani but he attached his passport size. He went on to argue that PW3 testified against the appellant. He added that the tribunal decided the matter on 28<sup>th</sup> January, 2022 and it issued a certified copy on 27<sup>th</sup> June, 2022 and the appellant filed the instant appeal on 22<sup>nd</sup> August, 2022.

In conclusion, the 2<sup>nd</sup> respondent beckoned upon this Court to analyse the evidence on record and do justice.

I have revisited the records and submissions of both sides now, I am in a position to determine the appeal. I will consolidate all grounds of appeal because they are intertwined.

Before determination of the appeal on merit, *suo mottu* I prompted the parties at the very outset to satisfy this court on the competence of the application before me. I raised such a concern because, on perusal of the record, I noted a point of law that the application the trial Chairperson did not append his signature after recording evidence of the witnesses on both sides.

Reverting back to the case at hand, parties are not at issue that the trial Chairperson did not append his signature after recording evidence of the witnesses called by both sides. I have examined the original record of the trial tribunal, it is vivid that the trial Chairperson did not append his signature and date after recording the evidence of all witnesses; PW1, PW2, PW3, PW4, DW1, DW2, DW3, and DW4. In this respect, the proper provision guiding the recording of witnesses' evidence is Order XVIII Rule 5 of the Civil Procedure Code Cap.33 which provides that:-

*“The evidence of each 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 added].*

That is to say, according to the above provision, it is imperative that the evidence once recorded, be appended with a signature of the 3 trial Magistrates or a judge recording the evidence. In **Yohana Musa Makubi & Another v The Republic**, Criminal Appeal No. 556 of 2016 at page 13, the Court of Appeal of Tanzania held that:-

*“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.”*  
*[Emphasis added].*

Therefore, in light of the above decision, the authenticity of the evidence adduced during the trial is confirmed. The omission by the trial chairperson to append his signature after recording the evidence of PW1, PW3, DW1, DW2, and DW3 is an incurable irregularity.

The decision on this point alone is sufficient to dispose of this appeal without venturing into discussing the grounds of appeal. Therefore, the proceedings of the Tribunal are nullity from 16<sup>th</sup> September, 2019 when PW1 started to testify. It also affected the judgment and decree thereon. In the event, I hereby nullify the proceedings the trial Tribunal starting from 16<sup>th</sup> September, 2019, quash and set aside the judgment and decree thereon. Consequently, I order a retrial of the case starting from the proceedings of 16<sup>th</sup> September, 2019.

For the interest of justice, it is ordered the matter be heard within 6 months before another Chairman and a different set of assessors. Having considered the circumstances of the case, I make no order as to costs.

Order accordingly.

Dated at Dar es Salaam this date 29<sup>th</sup> September, 2022.



A.Z.MGEYEKWA

**JUDGE**

29.09.2022

Judgment delivered on 29<sup>th</sup> September, 2022 via video conferencing whereas both parties were remotely present.



A.<sup>A</sup>Z.MGEYEKWA  
JUDGE  
29.09.2022