

**IN THE HIGH COURT OF TANZANIA**

**DODOMA SUB-REGISTRY**

**AT DODOMA**

**LAND REVISION NO. 3 OF 2021**

**(Arising from District Land and Housing  
Tribunal for Dodoma in Land Application No. 192 of 2021)**

**BETNESS TIBAIJUKA..... APPLICANT**

**VERSUS**

**NEEMA TUWA ABDALLAH..... 1<sup>ST</sup> RESPONDENT**

**GEOFREY M. MTUMBUKA.....2<sup>ND</sup> RESPONDENT**

**RULING**

5<sup>th</sup> day of July, 2023.

**HASSAN, J.:**

This application for revision stems from the decision of the District Land and Housing Tribunal of Dodoma in Land Application No. 192 of 2021. The applicant is appealing the court to revise the record of proceedings and decision of the District Land and Housing Tribunal of Dodoma in Land Application No. 192 of 2021 dated on 31<sup>st</sup> day of August, 2021 in order to satisfy itself on the correctness, legality or propriety of the said proceedings and decision.



When the matter was called on for hearing on 5<sup>th</sup> day of July, 2023, the applicant was represented by Ms. Isabela Mwalulefu, learned counsel. Whereas, on the other side, Mr. Samuel Mcharo, also learned counsel represented both respondents.

In the course of briefing, the counsel observed irregularity on the face of the record. The anomaly is observed is that the chairman who presided over the tribunal failed to append his signature after recording it from witnesses.

Consented by his fellow counsel, Mr. Mcharo kick started to submit that it is true that the chairman failed to append his signature after recording the evidence. The omission is very fatal as it vitiates the whole proceedings from the District Land and Housing Tribunal of Dodoma in Land Application No. 192 of 2021, and the same became nullity. Consequentially, he prayed this application be remitted to the tribunal to be heard afresh.

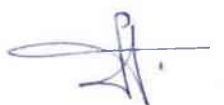
On her part, the applicant's counsel, Ms. Isabela candidly conceded to the fault, and she further concurred to the prayer fronted by her fellow counsel that the whole proceedings ought to be nullified as result of that defect.

Going through the above, the position of law with respect to this issue is very clear. For instance, Order XVIII Rule 5 of the Civil Procedure Code, [Cap. 33 R. E 2019] which 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 question and answer, but in that of a narrative and the judge or magistrate shall sign the same. "*

Similarly, in a number of times the Court of Appeal has been lecturing on this issue, that is, failure to append signature after recording the evidence for every witness is a fatal irregularity which vitiates the entire proceedings. See in **Yohana Mussa Makubi v. Republic, Criminal Appeal No. 556 of 2015; Sabasaba Enos @ Joseph v. Republic, Criminal Appeal No. 411 of 2017; Chacha Ghati @ Magige v. Republic, Criminal Appeal No. 406 of 2017 (all unreported)**. In the case of **Yohana Mussa Makubi v. Republic** (supra), the court 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. Besides, this emulates the spirit contained in section 210 (1) (a) of the CPA and we find no doubt in taking inspiration there from. In view of the stated omission the trial proceedings of the High Court were indeed vitiated and are a nullity and neither did they constitute the record of the trial and the appeal before us. We are thus satisfied that before us there is no material proceedings upon which the appeal could be determined."*

Couched from above, it is obvious that the requirement to append signature is vital for the assurance of authenticity, correctness and veracity of the witnesses's evidence. Therefore, failure to append signature in the evidence tantamount to fatal irregularity.

In the upshot, I concur with both counsel that, this application was flawed at DLHT. Consequentially, I nullify the whole proceedings, quash the decision and set aside the order meted out by tribunal. On the way forward, I remit the file for Land Application No. 192 of 2021 to the DLHT



of Dodoma for retrial *inter parte* by another chairman and new set of assessors. No order as to costs.

It is ordered.

**DATED** at **DODOMA** this 5<sup>th</sup> day of July, 2023.



*[Handwritten Signature]*  
**S. H. HASSAN**  
**JUDGE**

The seal of The High Court of Tanzania is circular, featuring a central emblem with a shield and two figures, surrounded by the text "THE HIGH COURT TANZANIA" and a star at the bottom.