

IN THE HIGH COURT OF TANZANIA

DODOMA SUB-REGISTRY

AT DODOMA

LAND APPEAL NO. 77 OF 2022

**(Arising from Manyoni District Land and Housing
Tribunal in Land Application No. 13 of 2021)**

LUCAS SHABANI MNYAKULOWA..... APPELLANT

VERSUS

MASHAKA SIMONI..... RESPONDENT

RULING

13th June & 5th day of July, 2023.

HASSAN, J.:

Being aggrieved by the decision of the District Land and Housing Tribunal of Manyoni in Land Application No. 13 of 2021, the appellant herein appealed to this court seeking for redress of his grievances. His memorandum of appeal is loaded with six grounds of which I preserve to dictate the same.

When the matter was called on for hearing today the 5th day of July, 2023, before hearing commenced, the court observed certain irregularities in the record of proceedings which appeared to be material to the merit of the case involving injustice. The irregularities noted are

such that the chairman who presided over the tribunal did not append his signature in the evidence of the witnesses including the appellant and the respondent. Also, assessors were not keenly involved in the decision making by the chairman in contravention of section 23 (2) of the Land Dispute Courts Act, [Cap. 216 R. E 2019].

At the hearing, the parties appeared in person unrepresented by counsel. Thus, I requested the parties to address the court on the issues observed. However, knowing that they are unrepresented laymen, and since what was raised by the court were purely the legal issues, they had nothing to submit rather than to leave the matter to the court for determination.

As it was observed, the chairman who had presided over the DLHT failed to append his signature in the evidence of the applicant herein and his witness, namely Juma Wilson. Also, he did not append his signature in the evidence of the respondent and his witness, namely Mitonyele.

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] 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 time without number, the Court of Appeal has lectured on this issue that, 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 my considered view that, the requirement 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 such situation it may be difficult to ascertain the truthfulness of the evidence recorded by a person who will not want to commit himself on what he recorded. In the upshot, the proceedings ought to be nullified and the order meted out be set aside.

With respect to assessor's opinion, position of the law which govern adjudication of land disputes before the DLHT is also clear. That is, in terms of section 23 (1) of the Land Disputes Courts Act, the DLHT shall be constituted by the Chairman and two assessors and their role is articulated under subsection (2) whereby after the trial is concluded, they

are mandatorily required to give out their opinions before the Chairman reaches the judgment.

The manner of which assessors shall give their opinions is governed by Regulation 19 (2) of the Land Disputes Courts (the District Land and Housing Tribunal (Regulations) 2003, which stipulates as follows:

"19 (2) Notwithstanding sub-regulation (1), the chairman shall before making his judgment, require every assessor present at the conclusion of the hearing to give his opinions in writing and the assessor may give his opinion in Kiswahili."

That being the case, looking on the record in the case at hand, it is clear that no record of assessors' opinions was enclosed to form part of the proceedings. On the date fixed for assessors' opinion, that is, on 5th October, 2022, after Coram the tribunal records read as follow:

Tribunal.

"The matter is for reading the opinion of assessors, the same is read [over] in the presence of both parties by the assessors themselves."

After that, the matter was adjourned for judgment. Thus, no assessors' opinions were recorded to form part of proceedings. However, coincidentally, in my effort to peruse the file as a whole, I came across two hand written papers, of which, it seems to be the assessors' opinions. But the same were neither admitted by the chairman nor endorsed by him to form part of the records. Simply those opinions were hanging in the file like some more documents which are not part of proceedings.

In my view, to form part of the records, the opinions should have been recorded in the proceedings and read over to the parties soon after hearing of evidence ended. Likewise, be it as it may, as they were recorded in the separate papers, the same should have been admitted and endorsed by the chairman to form part of the records.

In my understanding, such undertaking should have been visibly recorded in the proceedings on the date set for assessors' opinions. Thereafter, they should have been read over to the parties, and later be considered in the judgment. It is worth noting here that, in the appeal at hand, all these measures were overlooked.

Hence, apart from statutory guidance as I have mentioned above, there are number of authorities projecting on the same. To mention a few,

see: **Tubone Mwambeta v. Mbeya City Council, Civil Appeal No. 287 Of 2017** and **Edna Adam Kibona v. Absalom Swebe (Sheli) Civil Appeal No. 286 Of 2017** (both unreported). Adding to that, see also **Ameir Mbarak and Azania Bank Corp Ltd v. Edgar Kahwili, Civil Appeal No. 154 of 2015** (unreported), where faced with akin situation, the Court held that:

"...it is unsafe to assume the opinions of the assessors which is not on the record by merely reading the acknowledgement of the Chairman in the Judgment. In the circumstances, we are of a considered view that, assessors did not give any opinions for consideration in the preparation of the Tribunal's judgment and this was a serious irregularity."

Moved by the above authorities, as I have cited before, it is apparent that, assessors were not properly involved in the conduct of the DLHT. In the circumstance, their opinions were not recorded to form part of proceedings, and with that omission it cannot be said that the same was read over to the parties.

Therefore, since omission was fatal, then the whole proceedings became worthless. On the way forward, I implore the powers bestowed to this court under section 43 (1) (b) of the Land Dispute Courts Act, to quash and set aside the proceedings, judgment and any subsequent orders meted out by the tribunal. As sympathetic as it could be to the parties, the anomalies caused are too grave to be spared.

That said, I remit the file to the DLHT of Dodoma for retrial of the Land Appeal No. 13 of 2021 by another chairman and a new set of assessors. Since these issues were raised by the court *suo motu* there will be no order as for the costs.

It is ordered.

DATED at **DODOMA** this 5th day of July, 2023.



S. H. HASSAN

JUDGE