

IN THE HIGH COURT OF TANZANIA

DODOMA SUB-REGISTRY

AT DODOMA

LAND APPEAL NO. 73 OF 2022

**(Arising from District Land and Housing Tribunal for Singida
at Singida in Land Application No. 27 of 2019)**

MARIAM RAMADHANI..... APPELLANT

VERSUS

ANZIRANI ABDALLAH..... 1ST RESPONDENT

EMMANUEL G. MSENGI2ND RESPONDENT

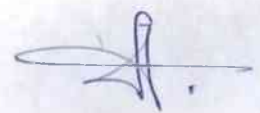
RULING

5th day of July, 2023.

HASSAN, J.:

Pained by the decision of the District Land and Housing Tribunal (DLHT) of Singida in Land Application No. 27 of 2019, Mariam Ramadhani, the appellant herein appealed to this court redress. Her memorandum of appeal is packed with six grounds as follow:

- 1. That, the trial tribunal erred in law and in fact by disregarding the appellant's evidence which was tight, as the appellant is the true owner of the land in*



disputes and she never sold the land in disputes and no sale agreement to prove the same.

- 2. That, the trial tribunal erred in law and in fact by deciding the case in favour of respondents and fail to consider the fact that, the appellant did not participate in the handing over of the land in disputes between the respondents as they failed to prove the same.*
- 3. That, the trial tribunal erred in law and in fact, after deciding the case basing on the contradicting evidence of the respondents while the appellant own the land in dispute since 1968.*
- 4. That, the trial tribunal erred in law and in fact be delivering the judgment which based on false evidence of the respondents and their witnesses.*
- 5. That, the trial tribunal erred in law and in fact in, after failing to consider that, no witness were summoned to prove the purchase of the land in disputes by the 1st respondent.*
- 6. That, this appeal is within the time limit the judgment is delivered on 27/09/2022[copy of judgment is attached herein to form part of this appeal.*

When the matter was called on for hearing on the 5th day of July, 2023, Mr. Emmanuel Bwile, learned advocate appeared for the appellant, whereas Mr. Jackson Mayeka, also learned advocate appeared for both respondents.

Before hearing of the appeal could proceed in earnest, the court invited the parties to address it on the propriety or otherwise on the duty

of chairman to append his signature after every witness has given evidence. And whether assessors were properly involved in the conduct of DLHT.

To begin with, Mr. Emmanuel Bwile stated that it is true that the chairman failed to append his signature in the evidence of PW1, PW2, PW3, PW4 and DW1. He averred that demand to append signature is a legal requirement set out under Order XVIII rule 5 of the Civil Procedure Code, Cap. 33 R. E 2019.

Also, the learned advocate cited the case of **Baraka Imani Tyenyi v. Tanzania Electrical Supply Limited and North Mara Gold Mining Limited, Civil Appeal No. 28 of 2019 – CAT** (unreported) which was cited with approval in the case of **Buninga Buyoya v. Charles Machombo, Land Appeal No. 45 of 2021 (2022) TZHC 755** on 13th day of march, 2022.

With that, advocate Bwile submitted that in the case above the whole proceeding was quashed and it was ordered to be heard *de novo*. To that end, as to the case at hand, he pressed that since chairman failed to append his signature, the same should be quashed and the resulted order be set aside. He further prayed for application to be remitted to the DLHT to start *de novo*.



Mr. Jackson Mayeka on his side concurred with his fellow advocate that the chairman had failed to append his signature in the evidence of every witness. To that effect, he cited the case of **Yohana Mussa Makubi v. Republic, Criminal Appeal No. 556 of 2015** (unreported) to cement his assertion. Similarly, he prayed that the proceedings from DLHT should be nullified and the order meted be set aside.

Going through the above, as it was rightly submitted by advocate Bwile that the position of law is very clear on this matter. 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. "

Equally, there are number of case laws addressing 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** (supra); **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."

In the upshot, I have no reason to depart with the learned gentlemen with their view. 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. 27 of 2019 to the DLHT of Singida for it, to be tried *de novo* by another chairman and a new set of assessors. No order as to costs.

It is ordered.

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




S. H. HASSAN
JUDGE