

**IN THE HIGH COURT OF TANZANIA**

**DODOMA SUB-REGISTRY**

**AT DODOMA**

**LAND APPEAL NO. 83 OF 2022**

**(Arising from District Land and Housing Tribunal for Singida at  
Singida in Land Application No. 30 of 2018)**

**HAMISI IPANDA LIMU & 5 OTHERS..... APPELLANTS**

**VERSUS**

**RAMADHANI JUMA MKUKI..... RESPONDENT**

***(Admin. of the Estate of the late Juma Mkuki Limu)***

**RULING**

1<sup>st</sup> day of August, 2023.

**HASSAN, J.:**

This appeal stems from the decision of the District Land and Housing Tribunal of Singida at Singida in Land Application No. 30 of 2018 delivered on 18<sup>th</sup> day of October, 2021.

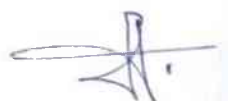
When the matter was called on for court deliberation today, 1<sup>st</sup> day of August, 2023, the appellants were represented by Ms. Koku Selemani, learned counsel. Whereas, on the other side, the respondent was absent for the second successive time without notice.



In the course of perusing the record of proceedings, I observed some irregularities on the face of the record. The anomaly observed is that, the chairman who presided over the tribunal failed to append his signature after recording the evidence from every witness. Also, it was further observed that assessors were not properly involved in the decision making by the tribunal.

That being the case, knowing that the irregularities observed are fatal and can dispose the appeal, and that, though respondent was absent, he has been absent for two consecutive sittings of the court without any sufficient reason or even a notice, then, for the sake of expediting end of justice, I think it was justifiable to proceed with the matter. Thus, I invited the available party to address the court on the issues raised by the court.

Therefore, Ms. Koku, who appeared for the appellant readily conceded that, proceedings were flawed in the DLHT. Shortly but clearly, she submitted that, it is true that the chairman had failed to append his signature after recording the evidence for each witness. The omission is ruinous as it vitiates the whole proceedings from the District Land and Housing Tribunal. She also seconded that; it is also true that assessors were not properly involved in the conduct of the DLHT. Their opinions were not recorded to form part of proceedings. Henceforth, Ms. Koka



prayed for proceedings to be nullified, quashed and set aside the decision and order from the tribunal.

Going through the above, I am certain that the position of law 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 understandable that the requirement to append signature is vital for the assurance of authenticity, correctness and veracity of the witnesses' evidence. Therefore, failure to append signature in the evidence tantamount to fatal irregularity.

In the upshot, I concur with the submission of the counsel for appellant, that this application was flawed at DLHT. Consequentially, I



nullify the whole proceedings, quash the decision and set aside the order meted out by the trial tribunal without costs.

As for the second issue on the propriety of Assessors' involvement. I think there is no persistent need to determine it, as the first issue had completely disposed the application, this issue can be spared to save energy and time. Therefore, on the way forward, I remit the file for Land Application No. 30 of 2018 to the DLHT of Singida for retrial by another chairman and new set of assessors.

It is ordered.

**DATED** at **DODOMA** this 1<sup>st</sup> day of August, 2023.



A handwritten signature in blue ink, appearing to read "S. H. Hassan", is written over the seal and extends to the right.

**S. H. HASSAN**

**JUDGE**