

**IN THE HIGH COURT OF TANZANIA**

**DODOMA SUB- REGISTRY**

**AT DODOMA**

**LAND APPEAL NO. 06 OF 2023**

Originating from Land Application No. 20 of 2017 of Singida  
District Land and Housing Tribunal)

**EDITHA ALOYCE MTIPA ..... APPELLANT**

**VERSUS**

- 1. SINGIDA MUNICIPAL COUNCIL**
- 2. SAIDI JUMANNE DUMWALA**
- 3. SALEHE RAJABU**

.....**RESPONDENTS**

**RULING**

*3<sup>rd</sup> day of October, 2023*

**HASSAN, J.:**

From the judgment of the District Land and Housing Tribunal of Singida at Singida in Land Application No. 20 of 2017 delivered on 13<sup>th</sup> day of October, 2022, the appellant Editha Aloyce Mtipa was aggrieved. Upright, she lodged her grievances to be determined by this court.

On the 3<sup>rd</sup> day of October, 2023, when the matter was called on for hearing, the appellant entered presence under legal escort of Mr. Nchimbi, learned advocate. Whereas, on the other side, Mr. Bahati Kikoti appeared



for the 1<sup>st</sup> respondent and Mr. Jackson Mayeka, learned advocate entered presence for the 2<sup>nd</sup> respondent. The 3<sup>rd</sup> respondent was absent as the matter proceeded *ex parte* on his part.

During hearing, right away Mr. Nchimbi alarmed the court that, going through the record of proceedings from DLHT he realised the existence of certain irregularities which is fatal to the merit of the case. He introduced them as thus, one, an opinion of assessors was not recorded in the proceedings.

To his view the omission is fatal and it violates rule 19(2) of the Land Disputes Courts (the District Land and Housing Tribunal) Regulations of 2002, which requires that before judgment is written there must be assessor's opinion given in writing. Therefore, he submitted that, the requirement of law is to have assessors' opinion in writing. Now, looking at page 52 of the proceedings, there is no opinions in the record. As a result of this anomaly, the whole proceedings became a nullity.

Apart from that, the record also shows that, the chairman who presided over the Tribunal failed to append his signature after each witness has given his evidence. It is also the requirement of the law that, when witness

complete to give evidence, then a person who record such evidence has to sign underneath of such evidence. He argued that, this is a requisite in terms of Order XVIII rule 5 of the Civil Procedure Code, Cap. 33 R.E 2019.

Mr. Nchimbi contended that in the case at hand, the chairman who record evidence of SM1 at page 35; SU1 (Christian Kasambala) at page 41; SU2 (Said Jumanne) at page 45; SU3 (Ali Abdalla) at page 47; and SU4 (Khadija Shaabani) at page 49 had not appended his signature in the evidence of all that witnesses. He submitted further that, the reason behind appending signature is to make the evidence authentic and therefore, its omission renders the evidence became questionable on its authenticity. He in furtherance, referred the case of **YOHANA MUSSA MAKUBI V. REPUBLIC, Criminal appeal No. 556 of 2015 -CAT** (unreported) where the Court of Appeal held that authenticity of the evidence can be secured by the trial judge to append his signature into the evidence that he records.

That said, he concluded that, owing to that irregularities observed that, the proceedings should be nullified, judgment and order arrived therefrom be quashed and set aside. And thus, the file be remitted to the trial tribunal to be heard afresh before another chairman and new set of assessors.



On the other hand, Mr. Jackson Mayeka, learned advocate for the 2<sup>nd</sup> respondent readily supported what was submitted by Mr. Nchimbi at the fullest.

More So, Mr. Bahati Kikoti, a senior legal officer appeared on behalf of Singida Manicipal Council coincided that, the proceedings from DLHT of Singida was faulted as rightly submitted by the appellant's advocate in his submission of which, he copiously concurred and thus, he prayed the matter be remitted to the DLHT to be trial *de novo* with no order for the costs.

Going through the above, I have no nerve to divert from where the gentlemen have arrived. Guessing from the records, its apparent that DLHT has faulted its proceedings on the points raised by advocates.

For instance, with respect to the issue of appending signature, I am certain that the position of law to that effect is precisely clear that, 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. "*

Enduring on this issue, for ages, the Court of Appeal has been lecturing on this aspect, 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's evidence. Therefore, failure to append signature in the evidence tantamount to fatal irregularity.

In the upshot, I concur with the submissions by the advocates, that this application was flawed at DLHT. Consequentially, the whole proceedings, and the decision ought to be quashed and set aside.

As for the second issue on the propriety of Assessors' involvement. Equally I cannot agree more than what the learned advocates have averred, fathoming in the records, it is obvious that assessors' opinions are missed in the record. Thus, on its absence, no one can confirm that it was composed, and read over to the party as required by the law. This is also a serious

omission on the part of DLHT conduct, and by its own, can vitiate the whole proceedings.

To that end, knowing that each irregularity observed could vitiate the whole proceeding independently, I think there is no persistent need to determine the issue of assessors comprehensively, as the first issue had completely disposed the application, this issue can be less detailed to save energy and time. Therefore, on the way forward, I nullify the whole proceedings from the DLHT, quash and set aside the judgment and orders meted thereto. At the end, I remit the Land Application No. 20 of 2017 to the DLHT of Singida for retrial by another chairman and new set of assessors.

It is ordered.

**DATED** at **DODOMA** this 3<sup>rd</sup> day of October, 2023.

A handwritten signature in blue ink, appearing to read "S. H. Hassan".

**S. H. HASSAN**

**JUDGE**