

IN THE HIGH COURT OF TANZANIA

DODOMA SUB-REGISTRY

AT DODOMA

LAND APPEAL NO. 88 OF 2022

(Arising from District Land and Housing Tribunal for Singida at Singida in Land Application No. 137 of 2018)

DANIEL A. MTIPA APPELLANT

VERSUS

SINGIDA M. COUNCIL 1ST RESPONDENT

FLORA JOHN 2ND RESPONDENT

SUZANA SAMSON 3RD RESPONDENT

JUDGMENT

10th October, 2023.

HASSAN, J.:

This appeal surfaced from the decision of the District Land and Housing Tribunal of Singida at Singida, in Land Application No. 137 of 2018 delivered on 27th day of September, 2022. Whereas, after hearing, the respondent became victorious. Aggrieved, the appellant geared up the instant appeal yielding five (5) grounds to be determined by the court. However, upon the reason to be apparent fleetingly, I will not dictate the said grievances.



Thus, when the matter was called on for court deliberation today the 10th day of October, 2023, the appellant was represented by the learned counsel Nchimbi. Whereas, on the other side, the 2nd and 3rd respondents were represented by the learned counsel Kidumage, while Mr. Bahati Kikoti, a senior legal officer for the 1st respondent entered presence in person.

During hearing, before the parties were allowed to sale their arguments, in the course of perusing the record of proceedings, the court *suo motu* observed certain irregularities on the face of the record serious enough to mark injustice. The glitch observed is that, the chairman who presided over the tribunal did not append his signature in the evidence of each witness after recording it. 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 detected are fatal, and each of them can dispose off the appeal and luckily all parties were under the care of legal specialists, then unhesitantly, I invited them to address the court on the hiccups raised by the court.

Starting -up, Mr Nchimbi readily conceded that, proceedings were flawed in the DLHT of Singida. Shortly but clearly, he submitted that, it is true that the chairman had not appended his signature after recording

the evidence for each witness. He submitted that such requirement is cemented under Order XVIII Rule 5 of the Civil Procedure Code, Cap. 33 R.E 2019. He further referred the decision in **Yohana Mussa Makubi v. Republic**, Criminal Appeal No. 556 of 2015 where the court of appeal insisted of the application of Order XVIII rule 5 of the Civil Procedure Code.

On the second anomaly, he seconded that, it is also true that assessors were not properly involved in the conduct of the DLHT. That is, their opinions were not recorded to form part of the proceedings. Henceforth, he cited the case of **Miko Kasanza v. Mariam A. Ndambabisa** H/C (unreported) which referred the decision of the Court of Appeal in **Hosea Andrea Mushongi (as administrator of estates of the late Hosea Mushongi) v. Charles Dabagambi**, Land Appeal No. 66 of 2021 (unreported) where the Court of Appeal insisted that opinion of assessors has to be visible in the record of proceedings otherwise the whole proceedings become a nullity and thus, the case was ordered to start afresh before another chairman and a new set of assessors.

At the end, since the omission is ruinous, he prayed to nullify the whole proceedings, quash and set aside the decision meted out by the

DLHT, and further remit the file to the tribunal to be heard afresh by another chairman and a new set of assessors.

On the other part, both Mr. Kikoti and Mr. Kidumage sustained the submission fronted by appellant's counsel to the fullest. Additionally, Mr. Kidumage further succumbed that, since Order XVIII Rule 5 of the Civil Procedure Code read together with section 51 (1) of the Land Dispute Court Act, Cap. 216 R.E 2019 provide for the legal stand-up, that the legal officer who records an evidence has to sign the same and failure to comply with this requirement vitiate the proceedings.

Going through the above, I am certain that the position of law regarding 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 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**, (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). Where in **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 gentle learned counsels for both the appellant and respondents that, this application was flawed at DLHT.

As for the second issue, that is on the propriety of assessors' involvement. Unreservedly, I coincide with the view of the parties and thus, I think there is no persistent need for further determination of the same as the first issue has completely disposed the application. Thus, energy and time can be spared for future endeavor.

Therefore, consequent to anomalies observed, the whole proceedings is nullified, decision quashed and orders set aside. And on the way forward, the case file for Land Application No. 137 of 2018 be remitted to the DLHT of Singida for retrial *de novo* by another chairman and a new set of assessors. No order as to costs.

It is ordered.

DATED at **DODOMA** this 10th day of October, 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