IN THE HIGH COURT OF TANZANIA

DODOMA SUB-REGISTRY

AT DODOMA

LAND APPEAL NO. 34 OF 2022

(Arising from the District Land and Housing Tribunal of Dodoma at Dodoma in Land Application No. 314 of 2019)

HARODI MASILU ..... APPELLANT

VERSUS

JEMS YOHANA MHAWI..... RESPONDENT

RULING

19th day of July, 2023.

HASSAN, J.:

Being aggrieved by the decision of the District Land and Housing Tribunal of Dodoma at Dodoma in Land Application No. 314 of 2019, the appellant herein appealed to this court seeking for remedy of his dissatisfaction. The appellant is armed up with four grounds of appeal, of which, for the reason to be apparent as I go along, I reserve to dictate the same here.

When the matter was called on for hearing today 18th day of July, 2023, before hearing commence, 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: that the chairman of the tribunal did not append his signature in the evidence of the witnesses including the applicant and the respondent. Also, assessors were not actively 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 appellant appeared in person unrepresented by counsel. Whereas, Ms. Raraja Shayo, learned counsel represented the respondent. The matter proceeded with hearing orally.

Henceforth, instead of letting the parties to sail with their grounds of appeal; I, *suo motu* invited both of them to address the court on the propriety or otherwise to the role of chairman of the tribunal to appends his signature after every witness has adduced evidence. Likewise, to address the court of the role of assessors in the conduct of the DLHT. That is, to give their opinions before judgment is pronounced.

Knowing that, these were legal issues, the appellant had little to say. He simply asked the court, that law should take its course.

On the other hand, Ms. Faraja confessed to the anomaly raised by the court. That is, the chairman did not append his signature after parties and their witnesses had adduced their evidence. Similarly, assessors were not properly involved in the conduct of the DLHT by not recording their

opinion to form part of the records. She however requested the court to invoke oxygen principle to forgo what was observed by the court. For that, she begs the court to correct such irregularities by using other ways instead of quashing the proceedings and remitting the file to the tribunal for retrial *de novo*. Ms. Faraja gave the reason that, these anomalies were caused by the tribunal itself and not the parties.

With that short submissions, it is apparent that either party has admitted that the application was flawed in the DLHT for the chairman's not to append his signature to the evidence adduced, as well as for not inviting assessors to give their opinions.

As it was observed by the court and supported by the parties, the chairman who had presided over the DLHT failed to append his signature in the evidence of the applicant herein and his two witnesses; namely L. Alexander and Z. Elra Nyesi. Also, he did not append his signature in the evidence of the respondent herein and his witnesses namely; Wilfred K. Nyasulu.

In law, position with respect to this issue is very clear. For instance, Order XVIII Rule 5 of the Criminal 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. "

To take stock of, in time without number, the Court of Appeal has held that, failure to append signature after recording the witnesse's evidence is a fatal irregularity vitiating 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."

Considering what was surfaced by the apex court, it is in my view that, such requirement is vital for the assurance of authenticity, correctness and veracity of the witness's evidence. Therefore, in the absence of such signature, 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 circumstance, with this omission, the proceedings ought to be nullified and the order meted out be set aside.

On another point, the 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 the 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 shah before making his judgment, require every assessor present at the conclusion of the hearing to give his opinions in writing and the assessors may give his opinions in Kiswahili."*

That being the case, looking on the record in the case at hand, it is clear that no record of assessor's opinions was adjoined to form part of the proceedings to indicate that assessors were invited to give their opinions. As for how the record of proceedings reveals on 31/03/2022, just after Coram, chairman has noted as hereunder:

> ***Tribunal;***
>
> ***"The matter is for reading opinion of assessors, the same is read [over] in the presence of both parties and the assessors."***

After that, the matter was adjoined for judgment. Thus, no assessors' opinions were recorded to form part of proceedings. However,

coincidentally, in my effort to peruse the file in 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.

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

In my view, such undertaking should have been conspicuously recorded in the proceedings on the date set for assessor's 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 hands, 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. Their opinions were not recorded to form part of proceedings, and in the circumstance, it cannot be said that the same was read over to the parties.

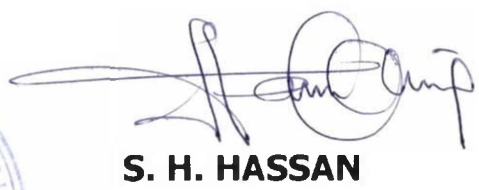
Therefore, the omission was fatal and the whole proceedings became worthless. On the way forward, I invoke the powers bestowed to this court under section 43 (1) (b) of the Land Dispute Courts Act, to

quash and set aside the proceedings, judgment and the 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 under oxygen principle.

In the circumstance, I remit the file to the DLHT of Dodoma for re-hearing of the Land Appeal No. 314 of 2019 by another chairman and a new set of assessors. No order as to costs, since issues were raised by the court *suo motu*.

It is ordered.

DATED at **DODOMA** this 19th day of July, 2023.



S. H. HASSAN

JUDGE