

IN THE HIGH COURT OF TANZANIA

DODOMA SUB - REGISTRY

AT DODOMA

MISC. LAND APPEAL NO. 69 OF 2023

(Originating from Land Application No. 21 of 2021 of District

Land and Housing Tribunal of Singida)

HALIMA HASSAN MALENGA.....APPELLANT

VERSUS

NORMAN PAUL 1st RESPONDENT

GOOD JUMANNE 2nd RESPONDENT

RULING

17.04.2024

HASSAN, J.:

The appellant Halima Hassan Malenga appeared before the court pained by the decision of the District Land and Housing Tribunal (DLHT) of Singida at Singida in the Land Application No. 21 of 2021 of which, the respondents emerged prize-winning.

Now before this court, the appellant preferred three (3) grounds of appeal for resoluteness. However, for reasons into which, they will be apparent hereunder, I will not replicate the same.

Coming on 8th April, 2024, the appeal was called on for hearing and the appellant Halima Hassan Malenga was present herself escorted by her legal representative learned counsel Ms. Mwanakombo Juma. On the other side, the lay respondents were present in person unrepresented. Both sides declared their readiness to commence hearing and the matter proceeded orally.

However, before parties progress with their submissions, *suo motto*, the court raised a legal point which requires satisfaction of the court as to the appropriateness of the proceedings emanated before the trial tribunal. That is, the District Land and Housing Tribunal (DLHT) of Singida. Thus, the irregularity observed is that, the chairman who presided over the tribunal failed to append his signature in the evidence of each witness. Therefore, upon such reflection, the court invited all parties to address the court on the legality or otherwise of the point raised.

To kick start, learned counsel for the appellant Ms. Juma was short and straight, she simply conceded that, it is apparent from the records of proceedings that the chairman in the trial tribunal had not appended his signature to the evidence of each witness who had testified. She therefore, prayed the court to nullify the whole proceedings and order for retrial.

On the other hand, the two lay respondents had nothing to submit but rather joined hands with what was presented by the learned counsel for the appellant. To that end, the matter rested to the court for its firm determination.

At his juncture, it is sufficient for the present purpose to cite the provision of Order XVIII Rule 5 of the Civil Procedure Code, Cap. 33 R.E 2019 which provides:

"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 off, in time without numbers, the Court of Appeal has held that, failure to append signature after recording the witnesses' evidence is a fatal irregularity which vitiates the entire proceedings. See for instance in **Yohana Mussa Makubi v. Republic**, Criminal Appeal No. 556 of 2015 (unreported) where 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.

Similar position was upheld in the cases of **Sabasaba Enos @ Joseph v. Republic**, Criminal Appeal No. 411 of 2017, and also **Chacha Ghati @ Magige v. Republic**, Criminal Appeal No. 406 of 2017 (all unreported).

That said, it is apparent from the records of evidence, both original and in the typed proceedings as in the instant case that, the chairman had not appended his signature onto the evidence of each witness who had testified. For instance, looking on the applicant (SM1), her evidence was not

appended by signature of the chairman. The same defect appeared in the evidence of other applicant's witnesses, including Rashidi Yusuf Shanga (SM2) and Mhibu Salum Napunda (SM3).

On the other hand, the chairman had also failed to append his signature in the evidence of the 1st respondent Norman Paulo (SU1) and the 2nd respondent Good Jumanne (SU2). He similarly committed the same fault for other respondent's witnesses, namely; Nkoki Muna Lihada (SU3) and Lisu Lihada Muna (SU4).

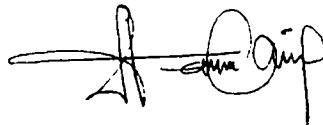
In the context thereof, I am certain that, on these issues raised, it needs not to raise one's eyebrows to see the flaw. Indeed, the chairman has completely failed to append his signature onto the evidence of each witness who testified, and that is a fatal error in the eye of law. Therefore, needless to say, as hinted out in the aforesaid authorities, in such a case the proceedings become nullity.

In the circumstance, I nullify the proceedings, quash the judgment and set aside the orders meted by the tribunal. Ultimately, I order for retrial before another chairman and a new set of assessors. More so, since the

irregularity was raised by the court *suo motto*, suit costs will remain *arbitrio judicis*. Thus, I make no order as to costs.

Ordered accordingly.

DATED at DODOMA this 17th day of April, 2024.

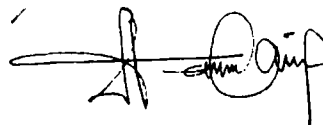


S. H. HASSAN

JUDGE

17/04/2024

This ruling delivered this 17th day of April, 2024 in the presence of the parties and the matter is ordered to start afresh under new panel.



S. H. HASSAN

JUDGE

17/04/2024