

IN THE HIGH COURT OF TANZANIA

DODOMA SUB - REGISTRY

AT DODOMA

MISC. LAND APPEAL NO. 57 OF 2022

(Originating from Land Application No. 35 of 2015 at

District Land and Housing Tribunal of Singida)

MHINA TULANGOMA.....APPELLANT

VERSUS

SINGIDA MUNICIPAL COUNCIL.....RESPONDENT

RULING

07.05.2024

HASSAN, J.:

The appellant Mhina Tulangoma appeared before the court pained by the outcome of the Land Application No. 35 of 2015 in District Land and Housing Tribunal of Singida. Where in course of their land dispute, the respondent herein emerged victorious.

Seeing that, the appellant advanced this appeal yielding two grounds of which, for the reason to be apparent soon, I will not dispatch them hereunder. In the hearing, the appellant enjoyed representation of the

learned counsel Lucas Komba. Whereas, on the other side, learned counsel Bahati Kikoti appeared for the respondent. And the matter proceeded orally.

However, in the course of perusing the file from the grass root, the court observed some irregularities in the records of proceedings for application No. 6 of 2014, which form a base of this appeal. Thus, the irregularities noted are that, assessors were not actively involved in the conduct of the tribunal. Also, the chairman who presided over the tribunal's deliberation failed to append his signature at the end of each witness's evidence after he completed to record it.

Following that observation, the court invited the gentle counsels to address it on the issues raised *suo motto*.

On his side, Mr. Lucas Komba, learned counsel kick started with the first issue that assessors were not actively involved in the conduct of the tribunal. On that, he submitted that, it is apparent from the record that assessors had not given their opinion. And that, failure to do so, is a fatal error under section 23 (1) of the Land Dispute Court Act, which requires assessors to participate in the proceeding of the tribunal. And at the end, they are obliged to give their opinion as per Regulation 19 (2) of the Land

Disputes Courts (the District Land and Housing Tribunal) Regulations 2003 which requires that, opinion should be visible onto the face of proceedings.

Therefore, he contended that for this anomaly, the proceedings become nullity. Consequently, he prayed the court to use its revisional powers vide section 43 of the Land Disputes Courts Act to revise the proceedings and order for retrial.

Going with the second issue, that the chairman had not appended his signature at the end of the evidence of each witness. Learned counsel Komba averred that, it is true that, chairman had failed to append his signature as sought contrary to the requirement of Order XVIII Rule 5 of the Civil Procedure Code, Cap. 33.

As a result, failure to do so, raised a question of authenticity of the evidence the chairman ought to have recorded. Consequently, the same ought to be nullified and the court order for trial *de novo*.

On the other hand, Mr. Kikoti, also learned counsel was brief. He readily concurred with the submission fronted by the appellant's counsel. Only to add, he submitted that, since application No. 6 of 2014 was the

benchmark of all other subsequent proceedings coming to this appeal, then the whole proceedings must be nullified for being born out of nihility cause.

At his juncture, I will start with the second issue, and thus, it is sufficient for the present purpose to appreciate from 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 and time again, it has been insisted by our apex court 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 into the evidence of each witness who had testified.

In the context thereof, I am without any uncertainty that, on these two issues raised, indeed, failure to append chairman's signature onto the evidence of each witness out of all witnesses who had testified, is a fatal error in the eye of law which alone can vitiate the entire proceedings. Therefore, needless to say, as hinted out in the aforesaid authorities, in such a case the proceedings become nullity.

More so, since the irregularity analysed herein above suffices to depose off the appeal, then, it need not wasting much time and energy to analyse the other point of irregularity. That is, involvement of assessors in the decision making.

In the circumstance thereof, I nullify the proceedings, quash the judgment and set aside the orders handed down by the tribunal. Eventually, I order for retrial before another chairman and a new set of assessors. And so, I make no order as to costs.

Ordered accordingly.

DATED at **DODOMA** this 07th day of May, 2024.

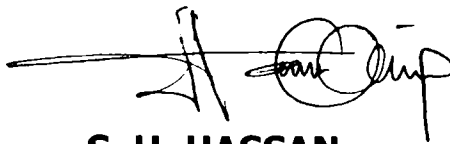


S. H. HASSAN

JUDGE

07/05/2024

This ruling delivered this 7th day of May, 2024 in the presence of the parties and the matter was ordered to start afresh under new panel.



S. H. HASSAN

JUDGE

07/05/2024