

IN THE HIGH COURT OF TANZANIA

DODOMA SUB - REGISTRY

AT DODOMA

MISC. LAND APPEAL NO. 21 OF 2023

(Originating from Land Application No. 90 of 2020 of District

Land and Housing Tribunal for Singida)

RAMADHANI KINYENJE1ST APPELLANT

KHALILI MAULIDI.....2ND APPELLANT

VERSUS

ISMAIL MUSSA LISU.....RESPONDENT

RULING

30.05.2024

HASSAN, J.:

In the District Land and Housing Tribunal (DLHT) of Singida at Singida in the Land Application No. 90 of 2020, the appellants herein were aggrieved by the decision of the tribunal. Now before this court, they preferred four (4) grounds of appeal for determination. However, for the reason to be apparent shortly, I will not reproduce the same.

When the appeal was called on for hearing, the 2nd appellant was present himself unrepresented by counsel, while the 1st appellant was

absent. Though, oral notice was unveiled by the 2nd appellant that the 1st appellant has passed away. Whereas, on the other side, the respondent was also present in person unrepresented by counsel.

Before parties jumped into own submissions, the court *suo motto* raised some irregularities which need gratification of the court as to the aptness of the proceedings from DLHT. The illegality observed include; **one**, whether or not assessors were properly involved in the conduct of the tribunal; **two**, whether or not, the chairman who presided over tribunal had appended his signature into the evidence of each witness after giving it.

Upon such reflection, the court, right away invited the parties to address on the legality or otherwise of the issue raised. Basically, the first question raised is whether or not the trial tribunal was properly constituted in compliance with section 23 (1) and (2) of the Land Disputes Courts Act, [Cap. 216 R. E. 2019]. And also, the other question is whether or not the chairman who had presided over the tribunal appended his signature on each witness's evidence, after he has recorded it.

Knowing that the issues raised by the court were typically the legal point of laws which requires juristic knowledge to analyse, hence, both parties candidly asked the court to proceed with its determination.

That being the case, it is important for the sake of precision to reproduce the provision of section 23 (1) and (2) of the Act.

"23 (1) The District Land and Housing Tribunal established under section 22 shall be composed of one Chairman and not less than two assessors.

(2) The District Land and Housing Tribunal shall be duly constituted when held by a Chairman and two assessors who shall be required to give out their opinion before the Chairman reaches the judgment."

Needless to say, from the provision of section 23 (1) here-above, composition of the Tribunal has been calculated to be compulsorily, a chairman sitting with not less than two (2) assessors. Besides, as for section 23 (2) which has to be read together with Regulation 19 (2) of the Land Disputes Courts (the District Land and Housing Tribunal) Regulations, G.N No. 174 of 2003, the Regulations. On it, the requirements are, after taking

part in the conduct of the matter, all assessors are required to give their opinions in writing, and the same should be read out to the parties before the Chairman utters the decision which incorporates those opinions. See for instance in **Edina Adam Kibona v. Absolom Swebe (Sheli)**, Civil Appeal No. 286 of 2017 (unreported); and also, the decision in **Peter Makuri v. Michael Magwega**, Civil Appeal No. 107 of 2019 (CAT) Mwanza (unreported), while dealing with the same issue, the court pressed that:

*“It is a mandatory legal requirement that in adjudicating land matters before the Tribunal, the Chairman sits with aid of assessors. The assessors sitting in, are vested with mandate to participate by asking questions, giving opinion albeit in writing before the Chairman proceeds to compose decision of the Tribunal. **And all these must be reflected on record of proceedings.** Besides, where the Chairman disagrees with the opinion of the assessors, he must record reasons. **In the absence on record of the opinion of assessors, it is impossible to ascertain if they did give any opinion for***

***consideration** in composing the judgment of the Tribunal.”*

See also the decision in the case of **Emmanuel Christopher Lukumai v. Juma Omari Mrisho**, Civil Appeal No. 21 of 2013, where alike stand was sustained.

That said, it is apparent from the record of proceedings that assessors' opinions were not recorded and, or given. To say the least, the records are silent, which means, there is nowhere in the proceedings assessors' opinion were recorded to form part of records.

Thus, it goes without saying, that in the circumstance, it is clear that the chairman has violated the principle buttressed in the case of **Peter Makuri v. Michael Magwega**, and that of **Emmanuel Christopher Lukumai v. Juma Omari Mrisho** (supra), where it was stressed among other things that, assessors sitting in the tribunal are vested with mandate to participate by asking questions, giving opinion albeit in writing, before the chairman proceeded to compose judgment. And all these, must be reflected into the record of proceedings.

Therefore, failure to record each assessor's opinion in the record of proceedings before judgment is composed, led into blander which can invalidate the entire proceedings.

The second issue is whether or not, the chairman who presided over tribunal had appended his signature into the evidence of each witness. Indeed, looking on the record of proceedings, both hand written and typed, it is clear, that, the chairman had not appended his signature into the evidence of the applicant, Ismail Mussa Lisu (SM1), and to his witnesses including; Hussein Mange Mkenyi (SM2), Mathias Ikaku (SM3). Similarly, he did not append his signature into the evidence of the respondent, Khalili Maulid (SU1), and his witnesses namely; Maulidi Mussa (SU2), and Juma Hamisi (SU3).

In the circumstance, I am alive of the legal position that, where a judicial officer recording evidence in a judicial proceeding omits to append his signature after recording it; he commits an error that vitiates the proceedings rendering them a nullity. That was the line of reasoning clearly adopted in **Yohana Mussa Makubi and Abuubakar Ntundu v. R**, Criminal Appeal No. 556 of 2015 (Unreported), where it was held:

"We are thus satisfied that, failure by the Judge to append his or 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 not tainted. Besides, this emulates the spirit contained in section 210 (1) of the CPA and we find no doubt in taking inspiration therefrom."

Other decisions in which the above position has been adopted and upheld as the law on the subject in this jurisdiction include; **Chacha Ghati Magige v. R**, Criminal Appeal No. 406 of 2017, **Magita Enoshi Matiko v. R**, Criminal Appeal No. 407 of 2017 and **Sabasaba Enos Joseph v. R**, Criminal Appeal No. 411 of 2017 (all unreported). The significance of appending a signature to the evidence after recording it is to, positively affirm that indeed the evidence was recorded by an appropriate magistrate or judge who is purported to have recorded it, see also **Richard Mebolokini v. R**, [2000] TLR 90.

Precisely, in view of the above, I subscribe to the same position as reached by the courts. Therefore, I am satisfied that, as the evidence of all witnesses in this case were not appended by signature of the chairman thus, the same does not constitute the records of the court, or to put it into better standpoint, the unsigned evidence is no better than the evidence that was not taken. Hence, the same ought to be expunged or nullified.

At this juncture, guided by the posted authorities, I am certain that, failure to observe the principled requirements, is a fatal boo-boo in the eyes of the law. Consequently, by appealing the power assumed to this court by virtue of section 43 of the Land Disputes Courts Act, [Cap. 216 R.E. 2019] to nullify the entire proceedings, quash the judgment and set aside the orders handed down by the tribunal. To that effect, I remit the file to the tribunal for retrial before another chairman and new set of assessors. That said, I make no order as to costs.

Ordered accordingly.

DATED at **DODOMA** this 30nd day of May, 2024.



S. H. HASSAN

JUDGE

30/05/2024

This ruling delivered this 30th day of May, 2024 in the presence of the parties.



S. H. HASSAN

JUDGE

30/05/2024