

**IN THE HIGH COURT OF TANZANIA
AT DODOMA**

MISCELLANEOUS LAND CASE APPEAL NO. 42 OF 2012

*(From the Decision of the District Land and Housing Tribunal of
Singida District at Singida in Land Case Appeal No. 131 of 2010 and
Original Ward Tribunal of Msisi Ward in Application No 03 of 2010)*

YOHANA HAMISI

.....

APPELLANT

VERSUS

JUMANNE NG'WADI

.....

RESPONDENT

RULING

17/11/2016 & 08/12/2016

SEHEL J.

This is a ruling on an issue raised by the Court at the hearing of the appeal. The issue raised and to which parties were invited to address the Court is the validity of the proceedings of Msisi Ward Tribunal. The reason that prompted this Court to invite parties to address it on the validity of Msisi Ward Tribunal proceedings is that it was noted that the proceedings do not indicate the names of the Tribunal members that sat and heard the dispute.

Both parties being laypersons had nothing much to assist this Court. The appellant simply stated that there were four members who sat and heard the Tribunal. If the names are not indicated then it was done by the Ward Tribunal. The respondent said there were

more than four members including the Chairperson and the Secretary.

It is trite law that in every sitting of the Ward Tribunal, half of its members should be present to form the quorum. This is clearly provided under **Section 4 (3) of the Ward Tribunal Act, Cap. 206**. It provides:

"The quorum at a sitting of a Tribunal shall be one half of the total number of members."

The members of the Ward Tribunal range from eight to four (see **Section 11 of the Land Disputes Courts Act, Cap. 216**). In the matter at hand, the members of Msisi Ward Tribunal were six as reflected on the date when the decision was delivered, that is, on 20/10/2010. Therefore, in each sitting of Msisi Ward Tribunal these six members were required to be present if at any point in time some of its members could not have been present then at least half of its members should have been present for a sitting to be validly constituted. It is on record that Msisi Ward Tribunal sat on various dates. It sat on 18/8/2010; 22/09/2010; 29/09/2010; 06/10/2010; and 20/10/2010. Unfortunately in all these sittings that Msisi Ward Tribunal sat and heard the dispute do not reflect the number of members who were present. The failure to indicate names of the Tribunal members in each sitting goes to the root of the validly constituted Tribunal. Since the names are not indicated then it is not certain as

to whether the quorum was reached or not. The question whether the quorum is reached or not, had to be determined first by any Tribunal before commencement of any hearing. The issue of quorum is so fundamental. It is therefore risky and unsafe for this Court to assume that the quorum was reached while the records do not indicate so.

In view of such irregularities, I do hereby invoke my revisional power under **Section 43 (1) (b) of the Land Disputes Courts Act, Cap. 216** by quashing the whole proceedings of Msisi Ward Tribunal and set aside its decision. Since the decision of the District Land and Housing Tribunal is found from the nullity decision, then I proceed to quash its proceedings and set aside its decision. I further make an order for the matter to start afresh in compliance with the law. I make no order to costs because the mischief was occasioned by the Ward Tribunal. It is so ordered.

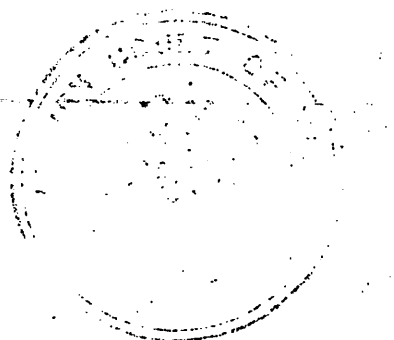
DATED at Dodoma this 08th day of December, 2016.



B.M.A Sehel

JUDGE

Ruling delivered at Dodoma under my hand and seal of the court,
this 08th day of December, 2016 in the presence of both parties.
Right of appeal is fully explained to the parties.



A handwritten signature in black ink, appearing to read 'B.M.A. Sehel', written over a horizontal line.

B.M.A Sehel

JUDGE

08th December, 2016.