

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(ARUSHA DISTRICT REGISTRY)**

AT ARUSHA

MISC. LAND APPEAL NO. 19 OF 2018

*(Arising from the decision of Arusha District Land and Housing Tribunal
Appeal No. 24 of 2016 as per Hon. Kagaruki, Chairperson)*

LOSHILARINDUKAIAPPELLANT

VERSUS

WILLIAM NDUKI.....RESPONDENT

JUDGEMENT

BEFORE: MAIGE, J.

This is an appeal against the decision of the District Land and Housing Tribunal for Arusha on appeal("the appellate tribunal"). In the said decision, the **appellate tribunal** dismissed the appellant's appeal for want of prosecution. The reason being that the appellant omitted to file a written submissions in support of his appeal within the allotted period. In the petition of appeal, the appellant questioned the correctness of the decision of the **appellate tribunal** on three accounts. First, for failure to hold that the **trial tribunal** was not duly constituted. Two, in not invoking its Revisional power

and quashed the decision and proceedings of the **trial tribunal** for being illegal. Three, for failure to properly evaluate the evidence.

The appeal was disposed of by way of written submissions. For the appellant, the submissions were prepared and filed **Mr. Lengei Nelson Merinyo**, learned advocate and for the respondent **Mr. Lawena**, learned advocate. I thank the counsel for their informative submissions. I have duly considered the same in this my judgment.

In support of the first and second ground of appeal, Mr. Laena blames the **appellate tribunal** in not invoking its revisional jurisdiction and nullifying the decision and proceedings of the **trial tribunal** for the reason of being improperly constituted. He submitted that; in terms of section 5(3) of the Ward Tribunals Act, 1985 the secretary of the tribunal though allowed to attend all meetings of the tribunal, he is not entitled to participate in the decision making of the tribunal in as much as he is not a member of the tribunal. In his view, the participation of the secretary in the decision making of the tribunal rendered the decision and whole proceedings nullity and, therefore, as a matter of law, the **appellate tribunal** was obliged to invoke its revisional power and correct the illegality.

On his part, **Mr. Lengei Nelson** was of the contention that; since under section 5(2) of the Ward Tribunal Act, the tribunal has power to regulate its own decision, the signing of the secretary into the decision of the ward

tribunal was one of the ways of regulating its procedure. With deepest respects to the counsel, I cannot agree with him. Who are the member of the tribunal for decision purpose and who are not, is not a mere question of the procedure. It goes to the jurisdiction of the tribunal. The ward tribunal attains jurisdiction to entertain matter if it is duly constituted. Under the express provision of section 5(3) of the Ward Tribunals Act, 1985, the secretary though allowed to attend in all the sittings of the tribunal, he is not a member of the tribunal for the purpose of the decision making. In the decision of the trial tribunal, I have noticed, the secretary did sign. The signing signifies his ownership to the decision which is not the case.

This Court has in **NADA QORI VS. ISAKI GILBA, MISCELLENEOUS LAND APPEAL NO. 2 OF 2013 (HIGH COURT-ARUSHA (UNREPORTED))** an opportunity to deal with a similar issue where the secretary of the tribunal had signed into the decision of the tribunal as if he was of the member. My sister judge Mugasha who presided over the proceedings was of considered opinion that a decision of the ward tribunal signed by the secretary of the tribunal was null and void. I entire agree with her and take it as the position of law.

For those reasons therefore, I will exercise my revisional powers under section 43 of the Land Disputes Court Act and nullify the judgments of both the trial tribunal and the appellate tribunal. They are accordingly nullified. The

file is hereby remitted to the ward tribunal for re trial. I will not give an order as to costs in the circumstance.

It is so ordered.

(SGD)I.MAIGE

JUDGE

14/09/2018

Date:- 14/9/2018

Coram:- I.Maige, J

Appellant:-

For the Appellant:- Present in person

Respondent:

For the Respondent: Present in person.

C/C:- Mariam.

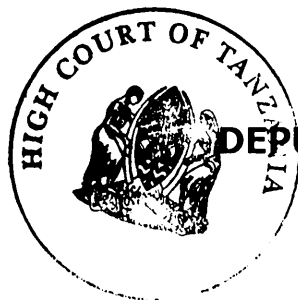
Court:- Judgment delivered appeal allowed.

(SGD)I.MAIGE,

JUDGE

14/9/2019.

I hereby certify this to be a true copy of the original.



J.F. Nkwabi

J.F. NKWABI

DEPUTY REGISTRAR

ARUSHA.

25/09/2018