

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

AT ARUSHA

MISC. LAND APPEAL NO. 38 OF 2017

*(Arising from the decision of Babati District Land and Housing Tribunal Appeal No. 68 of 2016 as
per Hon. Kamugisha, Chairperson)*

**AKONAAY TSEREAPPELLANT
VERSUS**

SEVERINI UMBULA.....RESPONDENT

JUDGEMENT

MAIGE, J.

This is an appeal against the decision of the District Land and Housing Tribunal for Babation appeal("the appellate tribunal"). In the said decision, the **appellate tribunal** concurred with the decision of the ward tribunal for Nambis against the appellant on the ownership of the **suit property**. In the petition of appeal, the appellant questioned the correctness of the decision of the appellate tribunal on two accounts which in essence raised a question on whether the ward tribunal was duly constituted when it was making the decision which was upheld by the **appellate tribunal**.

By the leave of the Court, the appeal was disposed of by way of written submissions which were filed in due compliance of the scheduling order. For the appellant, the same were filed by Miss. Mariam Sadi, learned advocate. The respondent being unrepresented he personally filed the submissions. I have duly considered the submissions and reviewed the judgments and proceedings of both the ward tribunal and the appellate tribunal. I will now determine the appeal.

In her written submissions, Miss Mariam was of the humble opinion that; in so far as it was signed by the secretary of the ward tribunal who is not a member of the tribunal; the decision of the ward tribunal was a nullity from the beginning. The counsel wonders why the appellate tribunal confirmed the decision notwithstanding its nullity. To cement her view, the counsel referred me to the authority in **NADA QORI VS. ISAKI GILBA, MISCELLENEOUS LAND APPEAL NO. 2 OF 2013 (HIGH COURT-ARUSHA (UNREPORTED))** to support the proposition that a decision of the ward tribunal signed by the secretary of the tribunal is null and void. On his part, the respondent, while did not make any comment on the authority, took the view that the secretary was a member of the tribunal and could thus take part in the decision making of the ward tribunal.

The issue which I have to address therefore is whether a secretary of the ward tribunal is a member of the ward tribunal for the purpose decision making. In **NADA QORI VS. ISAKI GILBA, MISCELLENEOUS LAND**

APPEAL NO. 2 OF 2013 (HIGH COURT-ARUSHA (UNREPORTED)), this Court had an opportunity to address a similar issue. It was of the considered opinion that the secretary was not a member to the tribunal for the purpose of decision making. Having held as such, the Court proceeded to declare the decision of the ward tribunal null and void for the same reason. The position of law on the doctrine of precedent is not unsettled. A previous decision of the High Court on similar issue is highly persuasive in a subsequent proceedings such that it cannot be departed from unless it is necessary so to do. Having read the authority and the provisions of sections 4(1) (a) , (2) and (4) of the Ward Tribunal's Act, Cap. 206 (R.E, 2002) and section 11 of the Land Disputes Courts Acts Cap. 216 (R.E.2002), I entirely concur with my sister judge of the High Court in her interpretation of the provisions. I agree with her that the secretary of the tribunal is not among the members of the tribunal for the purpose of decision making. Consequently, I would agree with Miss Mariam, learned advocate that; for the reason of being signed by the secretary of the ward tribunal and in so far as the secretary participated in the decision making the judgment and proceedings of the ward tribunal were nullity. The appellate tribunal ought not to have upheld the decision.

For those reasons therefore the appeal shall succeed to the extent of the second ground of appeal. For obvious reason, I cannot determine the remaining grounds of appeal. The appeal is henceforth allowed to the extent as a forestated. The judgments of both the trial tribunal and the appellate

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as aforesated. The judgments of both the trial tribunal and the appellate tribunals are hereby set aside and the proceedings thereof quashed. I will further direct that the file be remitted to the ward tribunal for retrial. I will not give order as to costs in the circumstance.

It is so ordered.



I.MAIGE

JUDGE

11/09/2018

Date:- 11/9/2018

Coram:- I.Maige, J

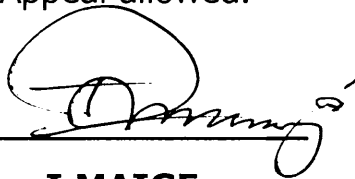
For the Appellant: Mariam Said

Respondent:-

For the Respondent:- Present in person

C/C:- Mariam

Court:- Judgment delivered. Appeal allowed.



I.MAIGE

JUDGE

11/9/2018.