

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(ARUSHA DISTRICT REGISTRY)

AT ARUSHA

MISC. LAND APPEAL NO. 39 OF 2017

(Arising from the decision of Babati District Land and Housing Tribunal Appeal No. 69 of 2016 as per Hon. Kamugisha, Chairperson)

AKONAAY TSEREAPPELLANT

VERSUS

MARTIN QAMARA.....RESPONDENT

JUDGEMENT

MAIGE, J.

In the second ground of appeal, the appellant is faulting the decision of the District Land and Housing Tribunal for Babati (“the appellate tribunal”), in confirming a nullity decision of the ward tribunal of Nambis (“the trial tribunal”) In his written submissions through advocate I Siayi, the appellant contends that for the reason of the decision of the ward tribunal being signed by the secretary of the tribunal who is not a member, the decision and the whole proceedings nullity. The counsel placed heavy reliance on the authority

of this Court in **NADA QORI VS. ISAKI GILBA, MISCELLENEOUS LAND APPEAL NO. 2 OF 2013 (HIGH COURT-ARUSHA (UNREPORTED))** where Madame judge Mgasha, as she then was, having declared that the secretary of the ward tribunal was not a member of the tribunal nullified the decision of the ward tribunal for being signed by the secretary of the tribunal.

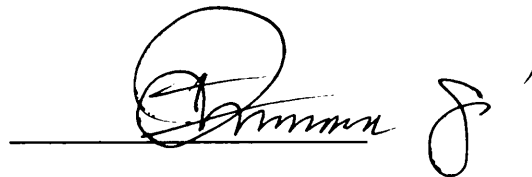
In his submissions in rebuttal, the respondent who personally filed the written submissions invited the Court to hold that a secretary of the ward tribunal was a member of the tribunal and he was entitled to take part in the decision making. He did not make any comment on the cited authority.

The question that I have to resolve in the circumstance is whether a secretary of the ward tribunal is a member of the tribunal. In **NADA QORI VS. ISAKI GILBA, MISCELLENEOUS LAND APPEAL NO. 2 OF 2013 (HIGH COURT-ARUSHA (UNREPORTED))** this court held that the secretary was not a member for the purpose of decision making. In the circumstance of this case and having read 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 subscribe to my learned sister Madame Justice Mugasha in the authority just referred that; the secretary of the ward tribunal is not among the members of the tribunal mentioned elected under section 4(1) (a) of the Ward Tribunals Act. He

In the cited authority, the High Court declared the decision of the ward tribunal null and void on account of being signed by the secretary. In this case, it is common ground that the secretary signed into the decision of the ward tribunal and participated during trial. I agree with the counsel for the appellant that the defect is fatal to both the decision and proceedings of the trial tribunal. The appellate tribunal should have not confirmed such a nullity 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 aforestated. 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.

A handwritten signature in black ink, appearing to read 'I. Maige', is written over a horizontal line. To the right of the signature is a small, stylized mark resembling a comma or a short stroke.

I.MAIGE

JUDGE

11/09/2018

Date:- 11/9/2018

Coram:- I.Maige, J

For the Appellant: Mariam Said Advocate

Respondent:-

For the Respondent:- Present in person

C/C:- Mariam.

Court:- Judgment delivered; Appeal allowed.



A handwritten signature in black ink, appearing to read "I. Maige", is written over a horizontal line.

I. MAIGE

JUDGE

11/9/2018