

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

AT ARUSHA

MISC. LAND APPEAL NO. 42 OF 2018

*(Arising from the decision of Babati District Land and Housing Tribunal Appeal
No. 94 of 2016)*

NICODEMU GADIYEAPPELLANT

VERSUS

HERMAN EDWARDRESPONDENT

MAIGE, J.

JUDGEMENT

This is a second appeal. In the first appeal at the district land and housing tribunal for Babati, the appellant did not succeed in his attempt to fault the judgment of the ward tribunal for Magara which had declared the respondent the lawful owner of the suit property. Just like in the instant appeal, in the first appeal, the decision of the ward tribunal was faulted, among others, for being made by a tribunal which was not properly constituted. The first appellate tribunal is faulted in not holding that the

judgment and proceedings of **trial tribunal** were null and void for want of proper quorum.

By the leave of the Court, the appeal was argued by way of written submissions which were filed by the parties themselves. I have duly considered the submissions and examined the judgment and proceedings of both the **trial tribunal** and the **first appellate tribunal**. I am inclined to agree with the appellant that the judgment and proceedings of the **trial tribunal** were fatally defective for want of disclosure of the members of the tribunal who presided over the proceedings during trial.

The hearing of the complainant by the **trial tribunal** was conducted on 02/04/2016, 23/04/2016, 14/05/2016, 28/05/2016 and 19/07/2016. The proceedings of the trial tribunal are silent on the number and names of the persons who constituted the trial tribunal during the hearing. It is only the proceedings on the *locus in quo* dated 19/07/2016 which contain names of the members who inspected the *locus in quo*.

This being the Court of record, it cannot, in the absence of evidence from the proceedings, ascertain whether the **trial tribunal** was duly constituted during trial. Under section 11 of the Land Disputes Act, Cap. 216, R.E. 2002, the ward tribunal is composed of not less than four and not more than eight members. The jurisdiction of the ward tribunal is only available if it is duly constituted. This Court has held from time to time that; omission to disclose the names of the persons constituting the ward tribunal during trial is a fatal irregularity. (See for instance, MWAJARUBI SUMUNI VS. LUSOBYA

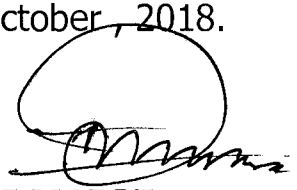
MASAMAKI AND TWO OTHERS, LAND APPEAL NO. 61 OF 2015, HIGH COURT MWANZA-UNREPORTED) and MUSSA ONANI VS. NOSE MAIGE, LAND APPEAL NO. 20/2010, HC MWANZA. This position was also emphasized by the court of Appeal of Tanzania in **WILLIAM STEPHEN VS LEAH JULIUS (administrix) of the late Neeva Sabuni**, Civil Appeal No. 65 of 2013. Since the proceedings of the **trial tribunal** are silent on the membership composition on the dates of the trial, its judgment and proceedings were null and void. The **appellate tribunal**, I will agree with the appellant, was wrong in confirming a nullity decision.

For those reasons therefore, I will allow the appeal and nullify the judgment and proceedings of both the **trial tribunal** and the **first appellant tribunal**. The file has to be remitted to the ward tribunal for retrial before different members. In the circumstance, I will not make an order as to costs.

It is so ordered.


I. MAIGE
JUDGE
29/10/2018

Judgment delivered in the presence of the appellant and in the absence of the respondent this 29th day of October, 2018.



I. MAIGE,
JUDGE
29/10/2018