before the trial Court. On appeal to the High Court there was reliance on the report by Mr Minja which purportedly recommended that the appellant's Right of Occupancy be revoked. We have already said that it was improper for the learned judge to act on a report which was not before the Court. We should perhaps also mention here that neither the appellant nor the respondent tendered evidence as to whether or not the disputed plot was registered under the Land Registration Ordinance Chapter 334. The only conclusion which in our considered view is justified by the evidence before the Court is that the appellant's Right of Occupancy was not revoked by the President. In the result, and for the above reasons, we allow the appeal with costs.

LALAGO COTTON GINNERY AND OIL MILLS COMPANY LIMITED *v.* LOANS AND ADVANCES REALIZATION TRUST (LART)

COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(Lubuva, Mroso and Nsekela, JJ.A.)

CIVIL APPEAL No. 51 OF 2002

(From the Judgment and Decree of the LART Loans Recovery Tribunal at Dar es Salaam, Msoffe, J. dated 12 June 2002 in Tribunal Case Number 13 of 2001)

Civil Practice and Procedure – Appeals – Appeal from the LART Tribunal to the Court of Appeal – Enabling and applicable legal provisions.

Statute – Interpretation of statutes – Meaning of "Registrar" – Whether the Registrar of the LART Tribunal is also "Registrar" under the Court of Appeal Rules – Rule 76 of the Tanzania Court of Appeal Rules 1979.

Constitutional Law – Right of appeal as a constitutional right – Appeal from the LART Tribunal to the Court of Appeal – Relevant laws not providing for

the procedure applicable in such appeals – Whether appellant may for that reason be denied the right to appeal – Article 13(6)(a) of the Constitution, section 20(1) of the Loans and Advances Realization Trust Act 1991, section 4(1) of the Appellate Jurisdiction Act 1979, and rules 76(1) and 3(2)(a) of the Tanzania Court of Appeal Rules 1979.

Civil Practice and Procedure – Appeals – Notice of Appeal – Notice of appeal and signature of the Registrar – Notice of appeal not signed by the Registrar – Validity and effect of such notice – Rule 76 of the Court of Appeal Rules 1979.

In an appeal against the decision of the Loans and Advances Realization Trust ("LART") Tribunal, the Notice of Appeal was not signed or endorsed by the Registrar of the High Court or the Registrar of the LART Tribunal but by some other unknown person. The LART Act 1991 provided that a judgment or order of the Tribunal "shall be challenged in the Court of Appeal" but the Appellate Jurisdiction Act 1979 and Rules made thereunder did not include in their provisions appeals from the LART Tribunal, nor were the Court of Appeal Rules 1979 incorporated in the provisions of the LART Act to govern appeals from the decisions of the LART Tribunal. The respondent accordingly raised a Preliminary Objection to the effect that the Notice of Appeal was invalid as it offended rule 76(1) of the Court of Appeal Rules 1979.

Held: (i) The LART Act 1991, as amended by Act Number 6 of 1994, now provided for a right of appeal from the decisions of the LART Tribunal to the Court of Appeal but the Appellate Jurisdiction Act 1979 was not amended so as to include appeals from the LART Tribunal and, therefore, the Court of Appeal Rules 1979 do not as yet provide for appeals from the decisions of the Tribunal;

(ii) The Registrar of the LART Tribunal before whom the impugned Notice of Appeal was lodged was not the Registrar of the High Court envisaged under rule 76(1) of the Court of Appeal Rules 1979;

(iii) Since by the provisions of article 13(6)(a) of the Constitution the right to appeal to a higher Court is a constitutional right, it would be wrong in principle to deny an appellant the right to appeal to the Court of Appeal against a decision of the LART Tribunal simply because section 20(1) of the LART Act 1991, which provides for appeals to the Court of Appeal did not provide for procedures to apply in appeals to the Court; therefore, pursuant to rule 3(2) of the Court of Appeal Rules 1979, those

rules should apply, *mutatis mutandis,* to appeals from the decisions of the LART Tribunal

(iv) The Registrar of the LART Tribunal is not the same person as the Registrar of the High Court under rule 76(1); in the circumstances, therefore, since this is a matter for which no provision is made by the Rules, the Court may, pursuant to the provisions of rule 3(2)(a), give directions as to the procedure to be adopted or make any other order it considers necessary;

(v) A Notice of Appeal must be lodged in accordance with the provisions of rule 76; as in this case the Notice of Appeal was not signed by the Registrar of the LART Tribunal but by someone else on behalf of the Registrar, the said Notice of Appeal is invalid.

Appeal struck out

Cases referred to:

(1) *Atlantic Electric Ltd. v. Morogoro Region Cooperative Union (1984) Ltd.* [1993] T.L.R. 12

(2) *Blanket Manufacturers Ltd. v. OTTU on behalf of Millanzi and others* CAT, Civil Appeal Number 64 0f 2000 (unreported)

(3) *Tanzania Revenue Authority v. Al Naeem Enterprises Ltd.* (unreported)

(4) *William Loitiame v. Asheri Naftali,* [2003] T.L.R. 320

(5) *Jackson Reuben Maro v. Hubert Sebastian,* CAT, Civil Appeal Number 8 of 2001 (unreported)

Mr Rweyongeza, for the Appellant

Dr. Tenga, for the Respondent

RULING OF THE COURT

(Dated 20 January 2004)

Nsekela, J.A.: When this appeal came for hearing Dr Tenga and Mr Mnzava, learned advocates for the respondent, raised a Preliminary Objection notice of which had been given in terms of rule 100 of

the Court Rules. The complaint by Mr Mnzava was to the effect that the Notice of Appeal filed by the appellant offended rule 76(1) of the Court Rules which requires that such a Notice of Appeal should be lodged with the Registrar of the High Court and that under rule 76(6), it should substantially comply with Form D of the First Schedule to the Court Rules. The impugned Notice of Appeal was not signed by the Registrar of the High Court and this rendered it invalid. In support of his submission the learned advocate cited two decisions of this Court, *Atlantic Electric Ltd. v. Morogoro Region Cooperative Union (1984) Ltd.* (1) and *Blankets Manufacturers Ltd. v. OTTU on behalf of Millanzi and others* (2).

On his part, Mr Rweyongeza, learned advocate for the appellant, forcefully submitted that under rule 15 of the Court Rules, there is no requirement that the Notice of Appeal must be signed by the Registrar of the High Court, but that the Registrar should cause the document lodged in the Registry to be endorsed. He added that the word "sign" had not been specifically used in both Rules 15 and 76(1). In addition, the learned advocate submitted that the absence of the Registrar's signature was a technical error which was "harmless" as he put it, and the Court could cure it under article 107A (2)(e) of the Constitution as amended by Act Number 3 of 2000.

However, Mr Rweyongoza was very candid in conceding that the Notice of Appeal was signed by a person other than the Registrar of the High Court. Despite this, he was of the view that this is a fit case in which the Court should step in and invoke rule 3 of the Court Rules in order to fill a gap occasioned by the absence of rules applicable to the situation at hand.

In reply to Mr Rweyongeza's submission, Dr Tenga submitted that the decisions of this Court have been consistent since *Atlantic's* case that Form D of the First Schedule to the Court Rules must be substantially complied with Dr Tenga however shared the views of his learned friend that the Court should entertain this appeal under rule 3 of the Court Rules.

A This Preliminary Objection has caused us considerable anxiety. It is not the usual objection that had come before this Court seeking to invalidate a Notice of Appeal since this appeal emanates from a decision of the LART Loans Recovery Tribunal (a Tribunal established B under the Loans and Advances Realization Trust Act 1991, (LART Act). Section 4(1) of the Appellate Jurisdiction Act 1979, provides as follows:

> 4(1) The Court of Appeal shall have jurisdiction to hear and determine C appeal from the High Court and from Subordinate Courts with extended jurisdiction.

The Court Rules 1979 made under the Appellate Jurisdiction Act govern the procedure for appeals from the High Court and Subordinate D Courts with extended jurisdiction to this Court. At the time when the Appellate Jurisdiction Act 1979, and Rules made thereunder were enacted, the LART Act 1991, was not in our statute books. More importantly, however, section 20(1) of the LART Act 1991, at that E time did not provide for appeals to this Court from decisions of the LART Tribunal whose decisions were final. The LART Act 1991, was however amended by Act Number 6 of 1994. Section 20(1) as amended, now provides:

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> 20(1) A judgment or order of the Tribunal on any matter before it shall not be final; and shall be challenged in the Court of Appeal.

The LART Act 1991, as amended, now provides for a right of appeal G from decisions of the Tribunal to this Court. Inadvertently, the Appellate Jurisdiction Act 1979, was not amended so as to include in section 4(1) appeals from the LART Tribunal. A possible alternative legislative route would have been to incorporate the Court Rules to govern appeals from decisions of the Tribunal in the LART Act itself, but H this was not done. It is therefore clear to us that the Court Rules do not as yet provide for appeals from decisions of the LART Tribunal. The Registrar of the LART Tribunal before whom the impugned Notice of Appeal was lodged is not the Registrar of the High Court envisaged I under rule 76(1) of the Court Rules.

Having said that however we cannot turn a blind eye to article 13(6)(a) of the Constitution. The right to appeal to a higher Court or tribunal is a constitutional right. It would be wrong in principle to deny the appellant the right to appeal to the highest Court of the land against the decision of the LART Tribunal simply because Parliament in enacting section 20(1) of the LART Act 1991 as amended, did not provide for procedures applicable for appeals to this Court. What is missing as it were, is a bridge connecting decisions of the Tribunal with the Court. Needless to say, the Registrar of the LART Tribunal is not the same person as the Registrar of the High Court under rule 76(1). In the circumstances, we are inclined to agree with Mr Rweyongeza and Dr Tenga, learned advocates, that this is a fit case in which to invoke the provisions of rule 3(2)(a) of the Court Rules which provides-

> 3(2) Where it is necessary to make an order for the purposes of:
>
> (1) dealing with any matter for which no provision is made by these Rules or any other written law;
>
> the Court may, on application or on its own motion, give directions as to the procedure to be adopted or make any other order when it considers necessary.

As stated before, section 20(1) of the LART Act 1991, as amended, provides for appeals to this Court. In order to construct a bridge linking the Court with the decisions of the LART Tribunal, we would invoke rule 3(2)(a) above and direct that the Court Rules 1979, shall apply *mutatis mutandis* to appeals from decisions of the LART Tribunal.

This is not the end of the matter. It will be recalled that Mr Mnzava's complaint was non-compliance with rule 76(1) and (6) read together with Form D of the First Schedule of the Court Rules, in that the Notice of Appeal was not signed by the Registrar. In this case, Mr Mnzava contended that even if it is taken that reference to the registrar should be Registrar of the LART Tribunal still the provisions of rule 76(1) and (6) were not complied with. This is because the person who signed the Notice of Appeal was not the said Registrar, but some

A other undisclosed person. Mr Rweyongeza had an answer to this. He was of the view that under rule 15 of the Court Rules, there was no requirement for the Registrar to sign the Notice of Appeal. The function of the Registrar was to cause it to be endorsed. This is an
B attractive argument but only recently, this Court had occasion to construe rules 15 and 76 in *Tanzania Revenue Authority v. Al Naeem Enterprises Ltd.* (3). The complaint here was to the effect that both the Notice of Appeal and the Memorandum of Appeal were not endorsed
C by the designated officials under the Court Rules.

This Court stated in part as under:

> It is our considered opinion that rule 15 is a general rule for lodging any document. However, as for the lodging of a notice of appeal, there is a
D specific rule, that is, rule 76 [emphasis supplied]

Thus a Notice of Appeal must be lodged in accordance with the provisions of rule 76. (For what it is worth, rule 15 is in Part II – General
E Administrative and Procedural Provisions" and rule 76 is in Part V "Appeal in Civil Matters". The Notice of Appeal was not signed by the Registrar of the LART Tribunal but by someone else on behalf of the Registrar. This Court has consistently held that such Notices
F of Appeal are invalid.) (See: *William Loitiame v. Asheri Naftali;* (4) *Jackson Reuben Maro v. Hubert Sebastian* (5) and *Blankets Manufacturers Ltd. v. OTTU on behalf of Millanzi and others.*

In the event, and for the above reasons, the Notice of Appeal is
G incompetent. It is struck out with costs.

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