

TANZANIA / JUDGMENT

mkome mtwale two others vs babilas mwenge mkome 2023 tzhc 20637 25 august 2023

COURT
TZHCDECIDED
25 August 2023

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB-REGISTRY OF
MWANZA AT MWANZA MISC. LAND CASE APPEAL NO. 21 OF 2023 (From the Decision of the
District Land and Housing Tribunal of Ukerewe District at Ukerewe in Land Case Appeal No. 21
of 2022) MKOME MTWALE.....
1st APPELLANT ROBERT MAKUNJA.....
2nd APPELLANT MAKUNJA SAMWEL.....
3rd APPELLANT VERSUS BABILAS MWENGE MKOME.....
RESPONDENT

JUDGMENT

IF & 25th August 2023 ITEMBA, J: This is the first appeal against the decision of the Ukerewe District Land and Housing Tribunal at Nansio (herein the Tribunal), where the respondent had sued the appellants over the ownership of land located at Hamkuligo suburb, in Bwiro Ward within Ukerewe District. At the end of the trial which was heard ex parte, the Tribunal granted all the prayers sought by the respondent and declared the respondent the lawful owner of the suit plot and the appellants as trespassers. The Tribunal further ordered the respondent to be paid a compensation of TZS 50,300,000/= following the appellants acts of cuttings trees and demolishing part of the wall of the respondent. The appellants were aggrieved and lodged the present appeal armed with 5 grounds one of them being the jurisdiction of the Tribunal try to the case. When the appeal was scheduled for hearing, Mr. Sijaona Revocatus appeared for the appellants while the respondent had the services of Mr. Peter Ndege, both learned counsels. Roling the ball, Mr. Sijaona told the court that he intends to proceed with only one ground of appeal which is about the jurisdiction of the District Land and Housing Tribunal. He argued that the Tribunal entertained the matter which was lodged in 2022 after the amendment of the Land Disputes Act, which were made in the year 2021 through Misc. Amendment No. 5/2021. That, these amendments made it mandatory for any suit to be initiated at the Ward Tribunal for mediation. That, although this suit was heard ex-parte, it did not pass through the Ward Tribunal therefore, the District Land and Housing Tribunal did not have jurisdiction to hear the parties. Finally, he

stated that, as the issue of jurisdiction can be raised at any stage, he pray this court to allow the appeal and order retrial where both parties will go through mediation according to law. Mr. Ndege briefly replied by stating that, he concedes to the applicant's learned counsel arguments because based on the current legal amendments this dispute should have started at Ward Tribunal for mediation but records show that it did not. That, it was important for the parties to go through mediation and thus the appeal should be allowed. Following the parties' submissions, the issue is whether the appeal has merit. Section 13(4) of the Land Disputes Courts Act states that: '(4) Notwithstanding subsection (1), the District Land and Housing Tribunal shall not hear any proceeding affecting the title to or any interest in land unless the ward tribunal has certified that it has failed to settle the matter amicably: Provided that, where the ward tribunal fails to settle a land dispute within thirty days from the date the matter was instituted, the aggrieved party may proceed to institute the land dispute without the certificate from the ward tribunal.' I have gone through the records and as rightly submitted by the appellant's counsel and conceded to by the respondent's counsel, the dispute between the parties herein was filed on 31st of August 2022, straight at the District Land and Housing Tribunal without passing through mediation stage at the Ward Tribunal. As the amendments of the Land Dispute Act were already made in 2021, parties were obliged to start with mediation at the Ward Tribunal. It is trite law that an issue of court's jurisdiction can be raised at any stage. See: Rhobi Marwa Mgare and 2 others v R Criminal Appeal 192/2005. It follows that, in the absence of proof of parties to have undergone settlement process before the Ward Tribunal in terms of section 13(4) of the Land Disputes Act, the Tribunal had no jurisdiction to try the case. The trial was therefore a nullity. Consequently, I hold that, there is merit in the ground raised by the appellants. I therefore allow the appeal, quash the proceedings and set aside the judgment and orders issued by the Tribunal. I further order for a retrial at the discretion of parties. No orders as to costs as the respondent conceded to the appeal. It is so ordered. DATED at MWANZA this 25th day of August, 2023. II L.J. ITEMBA JUDGE 25.08.2023

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://media.tanzlii.org/media/judgment/301820/source_file/mkome-mtwale-two-others-vs-babilas-mwenge-mkome-2023-tzhc-20637-25-august-2023.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/mkome-mtwale-v-babilas-mwenge-mkome-jurisdiction-tzhc-2023>

Prepared on 14 October 2026 · Esheria