

TANZANIA / JUDGMENT

pius bundala vs chausiku musabila

2023 tzhc 23614 28 december 2023

COURT
TZHCDECIDED
28 December 2023

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB - REGISTRY OF SHINYANGA AT SHINYANGA LAND APPEAL NO. 46 OF 2022 PIUS BUNDAIA .. IIIi ,
..... APPELLANT VERSUS CHAUSIKU MUSABILA
RESPONDENT [Appeal from the decision of the District Land and Housing Tribunal of Kahama.]
CHon. L.S. Lekamoi, Chairman.) dated the 13th day of July, 2022 in LaliG ApIJlication No. 06 of 2022 JU ENT 1Fh July & 2ffl' December, 2023. S.M. KULITA, J. This is an appeal from the District Land and Housing Tribunal of Kahama. The story behind this appeal in a nut shell is that, the appellant and respondent had a land dispute over the area located at Igegu in Bumbiti village in Kahama IVIL:Il!ci;J31. The same was held in the Ward Tribunal of Mo;)do in ti ie year 2021. On 10th December, 2021 the said tribunal decided on favor of the respondent herein. 1 Aggrieved with that decision, the appellant decided to file a fresh Land Application No.6 of 2022 at the Kahama District Land and Housing Tribunal. After learning that the dispute had already been determined by the Ward tribunal, On the 13th day of July, 2022 the District Tribunal ruled out that, the appellant ought not to file a fresh application but to appeal against the decision of Mondo Ward tribunal. That decision aggrieved the appellant, hence, this appeal with five grounds all of which can be centered into one, that the appellant was right to file a fresh application at the Kahama District Land and Housing Tribunal instead of lodging an appeal. On 24th April, 2023 the matter was scheduled for hearing. Both parties appeared in person, unrepresented. Submitting in support of the appeal the appellant stated that, the Ward Tribunal failed to reconcile them, thus gave them a certificate declaring that it had failed to reconcile. On that account, the Appellant was of the views that, it was right for him to lodge a fresh case at the District Land and Housing Tribunal rather than appealing against the decision of the Ward Tribunal. In the reply thereto the respondent stated that, he knows that, there is section 13 of the amended Land Dispute Act of 2019 which requires the 2 Ward Tribunal to deal with reconciliation only, and if the said reconciliation fails, it should give a certificate to that effect, hence the aggrieved party should file a fresh case at the District Land and Housing Tribunal. To him, this procedure would be valid if t. Ie Ward tribunal's decision would have been nullified first. I have earnestly gone through the parties' submissions and the records of the trial tribunal. As SUBmitted by both parties to the case, the record is vivid that, the parties herein had land dispute at the Ward Tribunal and the sa ne was actually determined by it. It is equally true that, after being aggrieved

with the decision of the Ward Tribunal, the appellant lodged a fresh application at the District Tribunal of Kahama. The appellant's application at the District Tribunal was dismissed for the reason that, he ought to have appealed against the Ward Tribunal's decision instead of filing a fresh case as he did. The issue for determination is whether the appeal is meritorious. The record provides that, the Ward Tribunal started hearing the parties dispute on 30th November, 2021. However, the Written Laws (Miscellaneous Amendments) (No.3) Act, 2021 was assented by the President on 28th September, 2021, well before the Ward Tribunal set for hearing the dispute at hand. But through section 45 of the said 3 Written Laws (Miscellaneous Amendments) (No. 3) Act 2021, section 13 of the Land Disputes Courts Act has been amended. The amendment is to the effect that the ward tribunal is placed with only the powers to mediate the parties. And if it fails, it just gives a certificate that it has failed to reconcile them. That is when the aggrieved party is required to file a fresh case at the District Land and Housing Tribunal. As the appellant adhered to the requirement of the above cited law, I find it that, the District Land and Housing Tribunal for Kahama was wrong to dismiss the application. In this event, I hereby order that the Land Application Case No. 6 of 2022 be remitted back to the District Tribunal for hearing on merit. For the sake of justice, that should be done by another Chairman with a new set of assessors. In the upshot, the appeal is hereby allowed. No order as to costs. **ttL S.M. KULITA JUDGE 28/12/2023 DATED at SHINYANGA this 28th day of December, 2023. S.M. KULITA JUDGE 28/12/2023 4**

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CASE PAGE	https://chat.esheria.ai/case-law/tanzania/pius-bundala-v-chausiku-musabila-jurisdictionoftribunals-tzhc-2023

Prepared on 14 October 2026 · Esheria