

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT SUMBAWANGA

MISC. LAND APPEAL NO. 23 OF 2020

*(Originating from the Decision of the District Land and Housing Tribunal of
Katavi District at Mpanda)*

JOHN MAHINDI APPELLANT

VERSUS

FORTUNATA KAJEMBE 1ST RESPONDENT

BENDERA MSIPI 2ND RESPONDENT

Date of last Order: 27/05/2021

Date of Judgment: 04/06/2021

JUDGMENT

C.P. MKEHA, J

The present appeal traces its origin from Kapalamsenga Ward Tribunal before which the appellant sued the respondents for alleged trespass over his piece of land measuring two acres. The Ward Tribunal held in favour of the appellant after being satisfied with evidence adduced before it that, the suitland was allocated to the appellant by the village Authority. The Ward Tribunal ordered one Iddi Athuman (who was not a party to the case before it) to hand over the suitland to the appellant. The relevant part of the Ward Tribunal's decision reads: "...Iddi Athuman amrejeshee Bwana John Mahindi Kipande cha ardhi alichoshindia katika baraza la ardhi kata kiasi cha ekali mbili (2) maana ni mali halali ya Bwana John Mahindi".

It would appear that, when the appellant lodged his claims before the Ward Tribunal the suitland was under occupation of the two respondents and the said Iddi Athuman. It is for that reason, when the respondents appealed to the District Land and Housing Tribunal, in view of challenging its decision the main ground of appeal was that, the appellant's suit before the Ward Tribunal was incompetent for reasons of non – joinder of a necessary party. The District Land and Housing Tribunal upheld the said ground of appeal. It allowed the respondent's appeal before it without further clarification.

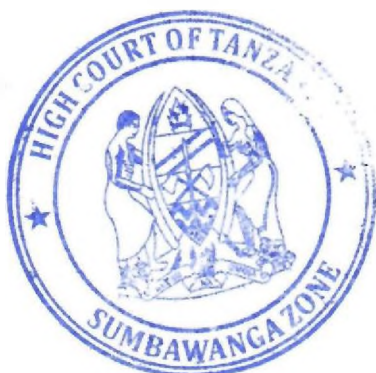
This is therefore a second appeal in which, this time, grievances have shifted to the appellant's side. The appellant's main ground of appeal is that the Appellate District Land and Housing Tribunal erred in law and fact in allowing the appeal thereby failing to order a retrial while it decided that a necessary party was not joined.

The present appeal proceeded exparte. This was because, the respondents refused to accept summonses as per affidavit of service dated: 27/08/2020. When the appellant was invited to argue his appeal, he asked the court to consider the grounds of appeal as appearing on his Memorandum of Appeal. The issue is **whether the Appellate Tribunal's decision of allowing the respondents' appeal was justified. And, whether after allowing the said appeal, the Appellate Tribunal ought to have proceeded in ordering a retrial as per the appellant's ground of appeal.**

As correctly decided by the District Land and Housing Tribunal, it was wrong on part of the Ward Tribunal, to make an order for surrender of the suitland, against one Iddi Athuman, who was not one of the parties before it. I am also in agreement with the learned Chairperson that indeed, the said Iddi Athuman was a necessary party in the case before the trial tribunal whose non – joinder was fatal. That being the position, the Appellate Tribunal ought to have struck out the suit before the trial tribunal which the trial tribunal had failed to do, for reasons of non – joinder of a necessary party. **See: Abdullatif Mohamed Hamis vs. Mehboob Yusuf Osman & Another, Civil Revision No. 06/2017, CAT (Unreported).**

I therefore hereby quash the trial tribunal’s proceedings and the resultant judgment and orders are set aside. The appellant’s suit before the trial tribunal is struck out for reasons of non-joinder of a necessary party. The appellant is advised to start afresh, subject to limitation, before the Tribunal having jurisdiction to determine his claims, by impleading all the necessary parties. Appeal partly allowed.

Dated at **SUMBAWANGA** 04th day of June, 2021.

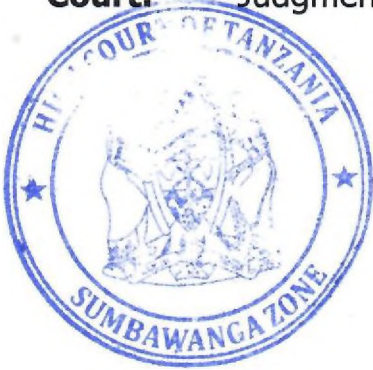



C.P. MKEHA

JUDGE

04/06/2021

Court: Judgment is delivered in the presence of the appellant in person




C.P. MKEHA

JUDGE

04/06/2021

Court: Right of further explained.




C.P. MKEHA

JUDGE

04/06/2021