

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF BUKOBA
AT BUKOBA**

LAND CASE APPEAL NO. 6/2018

*(Arising from application No. 29 of 2016 of the District Land and Housing
Tribunal at Kayanga)*

JONSON BESISILE.....APPELLANT

VERSUS

LADIUS LAURENT.....1ST RESPONDENT
SOSPETER SIMON.....2ND RESPONDENT
ELIZEUS R. LWABUTI.....3RD RESPONDENT

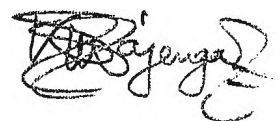
JUDGMENT

Date of last order 05/11/2020

Date of judgment 13/11/2020

Kilekamajenga, J.

The appellant, Jonson Basisile, applied for the administration of the estates of Felician Kamafa who died in 1994. The application was made in 2016 at Kayanga Primary Court at Karagwe. Finally, the appellant was granted the letter of administration of estates as applied. Immediately thereafter, the appellant filed a case against Richard Lwabuti and Sospeter Simon Rwabinyasi at the District Land and Housing Tribunal at Karagwe seeking, among other things, an order of declaration that the suit land be declared the property of the late Felician



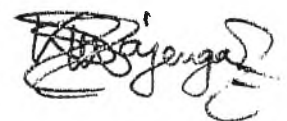
Kamafa. However, at paragraph 6(1) of the application, the appellant stated the following fact:

'That, the suit premises belongs to the estate of the late FELICIAN KAMAFa who had allocated his legacies (sic) to all his beneficiaries INTERVIVOS during his lifetime (sic).'

The respondent picked up this significant information and raised three points of preliminary objection thus:

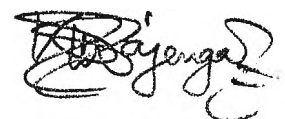
- (a) That the application is bad in law as it is not properly verified;*
- (b) That claim of ownership of land in question has been brought out of time and it is time barred;*
- (c) That the application suffers wrongful joinder of the respondent who has no any interest over the suit land.*

At the hearing of the points of preliminary objection, the respondents through the legal services of the learned advocate Samwel Angelo argued that the appellant had no locus standi to sue on the suit land because the same was allocated to the beneficiaries during the lifetime of Felician Kamafa. Finally, the trial tribunal was full convinced that the point of preliminary objection had merit and sustained it. As a result, the application was dismissed with costs. The appellant being aggrieved with the dismissal order, appealed to this Honourable Court. He coined one ground to challenge the ruling of the trial tribunal. The ground is coached thus:



That, the trial tribunal misdirected itself in law and on facts. Its decision relied on extraneous matters consequently it defeated the rules of natural justice. It condemned the appellant unheard.

The appellant appeared before this Court in person while enjoying the legal services of the learned advocate, Miss Erieth Barnabas whereas the respondents appeared in person and unrepresented. During the oral submission, the counsel for the appellant argued that the trial tribunal violated the principle of the rule of law by not affording the appellant the right to be heard on the merit of the case. The trial tribunal determined the point of preliminary objection which needed evidence. As the case was dismissed after sustaining the point of preliminary objection, the case was generally not heard on merit. To fortify her argument, she cited the case of **Cotwo (T) OTTU Union and another v. Hon. Iddi Simba, Minister of Industry and Trade and others [2002] TLR 88**. She argued further that the appellant is the administrator of the estates of the late Felician Kamafa who owned the disputed land. He urged the Court to allow the appeal so that the appeal may be heard on merit. She cemented the argument with the case of **Fredrick Selenge and Another v. Agness Masele [1983] TLR 99**. She finally prayed for the Court to set aside the ruling of the District Land and Housing Tribunal so that the matter may be heard on merit.



In response, the 1st respondent insisted that the appellant stated that the late Felician Kamafa allocated the land to the beneficiaries. If there is any dispute, the beneficiaries are the ones to complain and not the appellant. He urged the Court to dismiss the appeal with costs. On the other hand, the 2nd respondent submitted that he has been living in that village for more than 50 years and there is no land that belongs to the late Felician Kamafa. This is generally a doctored dispute which lacks merit. The 3rd respondent merely supported the other two respondent's arguments and urged the Court to dismiss the appeal. Thereafter there was no rejoinder from the counsel for the appellant.

I have considered the ground of appeal and the submissions made by the parties and it is pertinent to decide if the same has merit. I have carefully considered the application filed by the appellant before the District Land and Housing Tribunal and it is evident that the applicant stated that the later Felician Kamafa distributed the land to his beneficiaries during his life time. In my view, this was an important information which did not need further evidence because it was stated by the appellant himself. In the case of **Mukisa Biscuit Manufacturing Co. Ltd v. West End Distributors Ltd [1969] EA 696** the Court stated that:


'...a preliminary objection consists of a point of law which has been pleaded or which arises by clear implications out of pleadings, and which if argued as a preliminary point may dispose of the suit.'



Court:

Judgement delivered this 13th November 2020 in the presence of the appellant and his counsels, Misses Erith Barnabas and Liberator Bamporiki and the respondents were present in person. Right of appeal explained to the parties.




Ntemi N. Kilekamajenga
Judge
13th November 2020

