

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

LAND APPEAL No. 50 OF 2019

(Arising from application No. 147/2006 at the DLHT for Kagera at Bukoba)

FIDELIS FULGENCE KALUNGURA

(for Jubu Clan of Buhembe).....**APPELLANT**

VERSUS

AMOS FULGENCE KALUNGULA.....**1ST RESPONDENT**

GOTFRIS CLEMENCE.....**2ND RESPONDENT**

SOSTHENES BALTHAZARY MAKWAYA

*(Administrator of the estate of Nestory
Barthazary Mwakywa)*.....**3RD RESPONDENT**

DEUDEDITH YETES KALUGENDO

*(Administrator of the Estates of
Clephace Kalugendo)*.....**4TH RESPONDENT**

JUDGMENT

15th July & 13th August 2021

Kilekamajenga, J.

In 1998, through civil case No. 7A of 1988, the 1st respondent (Amos Fulgence Kalungura) sued William Kagaruki seeking an order to redeem the land of his father which his father pledged it at the cost of Tshs 4,000/=. The Primary Court, being the trial Court, allowed the 1st respondent's claim and he redeemed the land. William Kagaruki appealed to the District Court of Bukoba vide Civil Appeal No. 81 of 1988. The 1st respondent still won the case and he was allowed to refund Tshs. 4,000/= to William Kagaruki and redeem the land. He refunded him and the land was redeemed. On 08th June 2006, the 1st respondent sold the land to Cleophas Joseph Karugendo at the price of Tshs. 9,000,000/=. Within the same year i.e. 2006, the appellant sued the respondents alleging that they

sold the land without the consent of clan members. The suit was filed at the District Land and Housing Tribunal at Bukoba.

After conducting a full trial of the case, the case was decided in favour of the respondents. The appellant appealed to this Court in search of justice. He coined ten (10) grounds of appeal which all revolve around the ownership of the disputed land.

The appeal finally came for hearing; the appellant was absent but enjoyed the legal services of the learned advocate, Mr. Dunstan Mutagahywa. The 1st respondent was present and all the respondents were covered with the legal services of the learned advocate, Mr. Peter Matete. The Court ordered the case to proceed by way of written submissions. In the written submission, Mr. Mutagahywa argued that, the 1st respondent redeemed the land on behalf of the family and he was awarded Tshs. 301,000/= as a reward for redeeming the land. He invited the Court to read the minutes of the clan meeting that returned the land in the hands of the clan. However, the 1st respondent ended-up getting Tshs. 200,000/= and the balance of Tshs. 101,000/= could be paid later. In his view, the issue of whether the land was redeemed by the 1st respondent on behalf of the whole family was resolved in the family meeting on 15th October, 2002. Therefore, the position of the law that the land belongs to the redeemer does not apply in this case. Mr. Mutagahywa insisted that, after the clan meeting

in 2002, the land was jointly owned by all the children of the late Fulgence Kalungura.

He further argued that, the head of the clan had no mandate to authorize the sale of the land. Only the children of Fulgene Klaungura could consent to the sale.

On the other hand, Mr. Matete for the respondents argued that, it was not established whether the 1st respondent was directed by the family of Fulgence Kalungura to redeem the disputed land. The counsel was of the firm view that the 1st respondent redeemed the land on his own wish. He invited the Court to revisit the contents of the decision of Bukoba Urban Primary Court and that of the District Court of 1988. He further argued that the meeting held on 15th October, 2002 was held many years after the 1st respondent had redeemed the land. Mr. Matete was of the view that the decisions of 1988 which gave right to the 1st respondent over the disputed land could not over-turned by the meeting(s) of the clan. Also, failure to pay the reward of Tshs. 301,000/= to the 1st respondent was a breach of agreement. He further insisted that the land was legally sold to the father of the 4th respondent. He finally prayed for the appeal to be dismissed. Thereafter, there was no rejoinder.

I have carefully considered the submissions and grounds of appeal advanced by the appellant. As already-stated, the grounds of appeal revolve around on whether the 1st respondent after the redemption of the land became the owner

of the land. Throughout the records of the case, there is dearth of evidence to suggest whether the 1st respondent was instructed to redeem the land on behalf of the children of Fulgence Karugula. I have perused the file with a third eye and did not see such evidence. I was, therefore, obliged to consider the decisions of the Primary Court and District Court of 1988. The two decisions firmly stated that the land became the property of the 1st respondent after he refunded Tshs. 4,000/= to William. For clarity and quick reference, I take the direction to reproduce a relevant passage from the judgment of the District Court thus:

*"For the foregoing reasons above I have found that this appeal was lodged without substance. The respondent has the right to the shamba in dispute hence I uphold the judgment of the Primary Court while dismissing this appeal ... and **the respondent has the right of the shamba** and should retain possession of the shamba before disputed (sic) in his own right."* (emphasis added).

Now, the above order of the Court, which gave right to the 1st respondent over the disputed land, was not challenged through an appeal. Such order could not be reversed by the minutes of the clan meeting that convened on 15th October, 2002. So far, the meeting convened after the land was redeemed and there is no further evidence that the 1st respondent filed the suit in 1988 on behalf of the clan. Moreover, the law is already established that a person who redeems a clam land becomes the owner of that land. This stance of law was taken in the case of **Thomas Matondane v. Didas Mawakalile** [1989] TLR 210 thus:

'It is the law that the redeemer of clan land that had been pledged becomes the owner of that land.'

See also the cases of **Martin s/o Bikonyoro v. Celestin s/o Kaokola** (1968)

HCD 87 and **Gabriel s/o Nzizula v. Rooza d/o Muyungi** (1968) HCD 126.

Based on the reasons stated above, I hereby dismiss the appeal with costs. I further uphold the decision of the trial tribunal. I further declare that the 4th respondent is the lawful owner of the disputed land. It is so ordered.

Dated at Bukoba this 13th August 2021.



Ntemi N. Kilekamajenga

JUDGE

13/08/2021

Court:

Judgement delivered this 13th August 2021 in the presence of the counsel for the appellant, Mr. Dunstan Mutagahywa and the 1st respondent. The appellant and the other respondents were absent.



Ntemi N. Kilekamajenga

JUDGE

13/08/2021