

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

MISC. CIVIL APPLICATION NO. 04 OF 2022

(Originating from the High Court of Tanzania in PC Civil Appeal No. 33 of 2020 and Civil Revision No. 01 of 2019 of the District Court of Muleba and Probate and Administration Cause No. 34 of 2014 of Kashasha Primary Court)

BURCHARD BUTUNIKA..... APPLICANT

VERSUS

RICHARD BUTUNIKA.....RESPONDENT

RULING

08th April & 06th May 2022

Kilekamajenga, J.

Before this Court the applicant made an application by way of chamber summons praying for this Court to certify points of law in order to approach the Court of Appeal of Tanzania. The application was made under **Section 5 (2) (c) of the Appellate Jurisdiction Act Cap. 141 RE 2019** and **Rule 46 (i) of the Court of Appeal Rules of 2009**. The application was supported with an affidavit deposed by the applicant, Burchard Butanika. In the application, the applicant prayed for the Court to certify the following issues as points of law:

- a) Whether Kashasha Primary Court Administration of Estate No. 34 of 2014 was Res-judicata to Rukindo/Primary Court in civil case No. 01 of 1979.*
- b) Whether the trial Court of Kashasha/Mbunda Primary Court breached the doctrine of judicial Estoppel, for re-opening further litigation while the order of Munyera J, in (PC) Civil Appeal No. 205 of 1988 is still in existence;*

- c) *Whether Kashasha Mbunda Administration of Estate cause No. 34 of 2014 could have proceeded after the respondent had admitted that the clan council distributed the estates of the deceased person as was ordered by Munyera J.*
- d) *Whether the High Court Judge Mwenda J, in (PC) Civil Appeal No. 33 of 2020 had competent jurisdiction to (in PC) Civil Appeal No. 205 of 1988) overrule Hon. Munyera J, sitting in the same Court.*
- e) *Whether the Administration of estate of Kashasha Mbunda No. 34 of 2014 was not filed out of time from the death of the deceased persons Valentina Butanika who died in the year 31/10/1997 up to the year 2014 (37 years).*
- f) *That the High Court Judge erred for failure to nullify the whole proceedings emanating from Kashasha/Mbunda Primary Court Administration Cause No. 34/2014 for being superfluous, and entertained the multiplicity of the matter which had finality as per the order of Hon. Munyera J, who ordered the estate of the deceased to be distributed by clan council which did so in the year 2/8/2000 and admitted by the Respondent on 22/12/2014 before Kashasha Mbunda Primary Court Mirathi No. 34/2014.*

When the application came for hearing, the applicant was present and was represented by the learned advocate, Mr. Mathias Rweyemamu whereas the respondent was also present and enjoyed the legal services of the learned advocate, Mr. Derick Zephrine. In his oral submission, the counsel for the applicant briefly argued that, the estates of the late Valentine Butanika were distributed on 16/10/2000 by the clan members who were assisted by the

District commissioner and that the respondent also confirmed that the estates of the deceased was distributed. The probate and Administration cause No. 1 of 1979 concluded the administration of the estate and the subsequent cases were therefore *res judicata*. The decision by Hon. Judge Lyimo which nullified the subsequent distribution was made while the distribution was already made. The counsel finally urged the Court to certify the above points of law to approach the Court of Appeal.

In response, the counsel for the respondent urged the Court to dismiss the application due to the following reasons:

- 1) The probate and Administration cause No. 1 of 1979 was nullified by Hon. Judge Munyera and the matter was ordered to start afresh.
- 2) Also, Judge Lyimo insisted that clan members did not comply with the order of the Court issued by Hon. Judge Munyera.
- 3) The instant case has been in Court corridors since 1979 until now.
- 4) The probate and Administration cause filed by the respondent complied with the order of the Court and therefore, there is no issue of *res-judicata*.

When rejoining, Mr. Mathias Rweyemamu insisted that the decision by Hon. Judge Munyera did not order the hearing of the case *de-novo* and neither did it direct the parties to file a fresh case.

Having considered the submission from the parties, the pertinent issue is whether or not there is any point of law involved in this case which is worthy determination by the Court of Appeal of Tanzania. I have carefully considered the arguments advanced by the counsels for the parties and also perused the records of the Court, it is evident that there is no any point of law to involve the Honourable Court of Appeal of Tanzania in this case. I hereby dismiss the application. No order as to costs as it is a family dispute. It is so ordered.

Dated at Bukoba this 06th May 2022.





Ntemi N. Kilekamajenga
Judge
06th May 2022

Court:

Ruling delivered this 06th May 2022 in the presence of the applicant and his counsel, Mr. Mathias Rweyemamu (Adv) and the respondent present in person.




Ntemi N. Kilekamajenga
Judge
06th May 2022

