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## JANICE KAMBA INOTI VS. COMMISSIONER OF DOMESTIC TAXES

The Income Tax Act provides a Capital Gains Tax (CGT) exemption for agricultural land measuring less than 50 acres, but when does it actually apply? In practice, taxpayers must address a few key questions: Are you a natural person? Is the land agricultural? Is it less than 50 acres? And is it located outside a municipality or gazetted township? As straightforward as these questions may seem, the real test lies in how well each of these elements is evidenced.

We examine what the Tax Appeals Tribunal, in *Janice Kamba Inoti v Commissioner of Domestic Taxes*, considered to constitute sufficient evidence in establishing each of these requirements.

### Background

The taxpayer, Janice Kamba Inoti, acquired the land in 2010 for KSh 14 million and subsequently disposed of it in 2023 to Africa Education and Development Trust (a registered trust) for KSh 19.2 million.

In 2025, the KRA raised a CGT assessment of KSh 2,850,000 in respect of the disposal of the property. The taxpayer objected, asserting that the property was exempt from CGT on the basis that it constituted agricultural land situated outside a municipality.

### The Law

Paragraph 36(d)(ii) of the First Schedule to the Income Tax Act (Cap 470, Laws of Kenya) provides an exemption from Capital Gains Tax for:

*(I) Such part of the income of an individual, chargeable to tax under section 3(2)(f) as consists of a gain derived from the transfer of property (being land) transferred by an individual where:*

*(ii) agricultural property having an area of less than fifty acres where such property is situated outside a municipality, gazetted township or an area that is declared by the*



*Cabinet Secretary, by notice in the Gazette, to be an urban area for the purposes of this Act;*

### **Taxpayer's Case**

The taxpayer contended that the transaction was exempt from CGT on the basis that the property measured approximately 4.03 acres.

She further submitted that the land constituted agricultural property situated outside a municipality, relying on a Survey Report dated 30 July 2025 filed before the Tribunal.

Additionally, she argued that the requirement for Land Control Board consent as a completion document under the sale agreement was indicative of the land's agricultural character.

The taxpayer maintained that she had furnished sufficient documentation and even invited the KRA to conduct a site visit to verify the residential and farming activities on the property, which the KRA declined.

### **KRA's Case**

The KRA stated that it had requested the taxpayer to provide the exact location of the parcel, including its coordinates in relation to municipal boundaries, and that the taxpayer responded by submitting a survey report from Geo-Angular Surveys Ltd.

The KRA contended that the report was insufficient, as it was not supported by official county documentation clearly delineating the municipal boundaries vis-à-vis the property's coordinates.

### **Issue for Determination**

*Whether the net gains arising from the transfer of the Property owned by the Taxpayer are exempt from CGT.*

### **Analysis and Findings**

The Tribunal found that the taxpayer discharged part of her evidential burden by producing the Title deed and her National Identity Card and PIN Certificate, which firmly anchored the transaction

to a natural person. This was legally significant, as the exemption under Paragraph 36(d) of the First Schedule to the Income Tax Act is expressly available to individuals.

The Tribunal further observed that the taxpayer produced a Title Deed confirming ownership of land measuring 4.03 acres, well below the statutory threshold of fifty (50) acres.

In addition, the Tribunal placed considerable weight on the Land Control Board consent produced by the taxpayer, noting that such consent is only required for transactions involving agricultural land. It therefore constituted cogent and independent evidence supporting the agricultural character of the property. Taken together, these documents sufficiently demonstrated that the land met the statutory requirement of being agricultural land of less than 50 acres.

The remaining issue was whether the land was situated outside a municipality, gazetted township. The taxpayer relied on a Surveyor's Report which identified the location of the land and indicated that it lay outside municipal boundaries. However, the KRA challenged its probative value on the basis that it was not supported by official county boundary documentation.

The Tribunal noted that under Paragraph 12A of the Schedule to the Stamp Duty Act (Cap 480), the applicable rate of stamp duty—4% for property within a municipality and 2% for property outside, turns primarily on location rather than use or tenure. In this regard, the Tribunal held that neither land use nor tenure is determinative of urban or rural classification.

Importantly, the Tribunal emphasised that the transfer instrument used at acquisition would have been crucial in establishing whether stamp duty was assessed at 4% or 2%, but this document was not produced. Without it, the Tribunal could not conclusively determine whether the property was within a municipality or otherwise.

The Tribunal therefore held that while the taxpayer had successfully proven that the land was agricultural and under 50 acres, she failed to



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discharge the burden of proving that the property was located outside a municipality, township, or an urban area designated by the Cabinet Secretary. It reiterated that a taxpayer seeking exemption under Paragraph 36(d) must satisfy all statutory conditions cumulatively, and failure on any one limb is fatal to the claim.

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