

**IN THE COURT OF APPEAL OF TANZANIA  
AT ARUSHA**

**(CORAM: NDIKA, J.A., LEVIRA, J.A., And MAKUNGU, J.A.)**

**CIVIL APPEAL NO. 325 OF 2020**

**PASKALI NINA ..... APPELLANT**

**VERSUS**

**ANDREA KARERA ..... RESPONDENT**

**(Appeal from the Judgment and Decree of the High Court of Tanzania  
at Arusha)  
(Sambo, J.)**

**dated the 23<sup>rd</sup> day of November, 2012  
in  
Miscellaneous Land Appeal No. 60 of 2010**

.....

**JUDGMENT OF THE COURT**

15<sup>th</sup> & 21<sup>st</sup> February, 2023

**NDIKA, J.A.:**

The appellant, Paskali Nina, is aggrieved by the dismissal of his appeal to the High Court of Tanzania sitting at Arusha ("the High Court") in Miscellaneous Land Appeal No. 60 of 2010. In doing so, the High Court effectively upheld the decision of the District Land and Housing Tribunal of Karatu District ("the District Tribunal") in Land Appeal No. 9 of 2010 that had overturned the decision of the Ward Tribunal of Endabash ("the Ward Tribunal") in Application No. 11 of 2008 that was in favour of the appellant. At the heart of the dispute, the appellant and his adversary, Andrea Karera,

the respondent herein, tussle over ownership and possession of a piece of land approximately measuring one acre in Endabash village ("the property").

The facts of the case are essentially undisputed. The appellant sued the respondent in the Ward Tribunal claiming title to the property. He adduced that the property was previously owned by a certain Shabani Hamisi who died in 1999 and that he bought it in 2007 for TZS. 400,000.00 from the deceased's sons, Emmanuel Shabani and Zephania Shabani. The sale agreement, the appellant added, was witnessed by the Village Executive Officer, and embossed with the official rubber stamp. Emmanuel and Zephania gave evidence in support of the appellant's claim.

Conversely, the respondent asserted that he bought the property from the said Shabani Hamisi for TZS. 100,000.00 on 23<sup>rd</sup> March, 1992 vide a sale agreement, which was admitted in evidence. At the time, the property contained a house and a farm. James Waharo and Nanagi Tlagha, who witnessed the sale, testified in full support of the respondent's case. More tellingly, the respondent adduced that the sale was also witnessed by Emmanuel Shabani and Zephania Shabani. It appears that Emmanuel Shabani was not happy with the sale. According to the respondent, as early

as 1994 Emmanuel Shabani battled him over the land resulting in the said Emmanuel Shabani being criminally charged in a primary court in Karatu.

It occurred that the sale of the property to the appellant was made after the Village Council had on 13<sup>th</sup> June, 2005 revoked the sale by Shabani Hamisi to the respondent. Following the revocation, the Village Executive Officer handed over the property to the late Shabani Hamisi's family through Emmanuel Shabani and Paulo Shabani on 22<sup>nd</sup> September, 2005.

The Ward Tribunal visited the *locus in quo* where it heard from a certain Mama Mary supporting the appellant's claim while, on the other hand, Guwa Gunti and Gitu Masonda maintained that the respondent bought the property from Shabani Hamisi. Perhaps, we should observe, albeit very briefly, that the approach by the Ward Tribunal in recording the statements made at the *locus in quo* by the three persons who did not testify at the trial was manifestly unprocedural (see, for instance, **Nizar M. H. Ladak v. Gulamali Fazal Jan Mohamed** [1980] T.L.R. 29). Be that as it may, we do not think this matter is an issue that is decisive on the outcome of the appeal in the circumstances of this dispute. We, therefore, leave it at that.

The Ward Tribunal took the view that the sale of the property to the appellant was valid primarily because it was made at the Office of the Village Executive Officer and that the initial sale to the respondent made in 1992 had been duly revoked. In the premises, it adjudged the appellant the lawful owner of the property.

On appeal by the respondent, the District Tribunal overturned the Ward Tribunal's decision reasoning as follows:

*"... when the respondent Paskali Nina bought the disputed land from the sons of the late Shabani Hamisi in 2007, the disputed land was already so purchased by the appellant Andrea Karera from the original owner one Shabani Hamisi, now deceased, on the 23<sup>rd</sup> March, 1992 as evidenced by a sale agreement to that effect and had since then been in possession to date.*

*"The second sale agreement between the sons of the late Shabani Hamisi and the respondent Paskali Nina is void ab initio as the said sons of the late Shabani Hamisi made disposition over a piece of land which is not their property nor [part of] the estate of the deceased Shabani Hamisi."*

The High Court, on appeal by the appellant herein, decided the matter in favour of the respondent on two main grounds: first, that since the respondent occupied the property continuously since 1992 for more than twelve years, it became his property, and that no other person or authority could have taken away his title. That the Village Council's purported revocation of the sale was a nullity. Secondly, that as there was no proof that Emmanuel Shabani and Zephania Shabani who sold the property to the appellant were duly appointed administrators of the estate of their deceased father, they had no right to sell the property and, hence, the appellant did not obtain any good title to the property. The court then went on holding that:

*"This is to say that [the appellant] had no colour of right to institute the case in the trial Ward Tribunal, or simply that he had no locus standi to do so. It goes without saying that the proceedings in the trial Ward Tribunal were nullity ab initio. The appellate Tribunal acted on [a] nullity .... I now declare the proceedings in the Ward Tribunal for this case a nullity and quash them in their entirety."*

Having so concluded, the court dismissed the appeal with costs.

The appellant now appeals to this Court on five grounds as follows:

- 1. That the High Court judge grossly erred in law by not finding and holding that Miscellaneous Land Appeal No. 9 of 2010 before Karatu District Land and Housing Tribunal was time-barred.*
- 2. That the High Court Judge grossly erred in law by not finding and holding that the sale agreement relied upon by the respondent and the court was ineffectual and unenforceable for the lack of the Village Council's approval.*
- 3. That the High Court judge erred in law by finding and holding that the decision of the village authority was a nullity without first affording the parties an opportunity to be heard.*
- 4. That the High Court judge grossly erred in law by finding and holding that the respondent was in occupation of the disputed land since 1993 while there was no evidence of transfer of title in support of the said finding.*
- 5. That the High Court judge grossly erred in law by finding and holding that Emmanuel Shabani and Zephania Shabani lacked capacity to sell the deceased's property while there was ample evidence that the said Emmanuel Shabani and Zephania Shabani acquired the disputed land through the decision of the village authority.*

Since this appeal against the decision of the High Court dated 23<sup>rd</sup> November, 2012 arises from a decision of a Ward Tribunal on a land matter, it could only be pursued upon the High Court certifying in terms of section

47 (2) of the Land Disputes Courts Act ("the LDCA"), as it was at the time, that it involves a point of law. In accordance with the law, the High Court (Massengi, J.), on 7<sup>th</sup> March, 2014, issued a ruling in the appellant's favour certifying that the appeal would involve two points of law thus:

- 1. Whether the appeal filed in the District Land and Housing Tribunal was filed out of time; and*
- 2. Who between the parties has legal title to the disputed land.*

At the commencement of the hearing of the appeal, we asked the parties to address us on whether the five grounds cited for the appeal substantially reflect the points of law the High Court had certified. It emerged that there was no dispute as to the validity of the first ground in the memorandum of appeal. So far as grounds 2 to 5 were concerned, Mr. Safari Emmanuel, learned counsel, who teamed up with Mr. Qamara Aloyce Peter, also learned counsel, to represent the appellant, submitted that the said grounds raise specific issues within the context of the larger or comprehensive question as to who between the parties has title to the property. The respondent, who was self-represented, quite understandably offered no rebuttal to Mr. Emmanuel's submission.

It is germane to recall what we stated in **Yakobo Magoiga Gichere v. Peninah Yusuph**, Civil Appeal No. 55 of 2017 (unreported) that:

*"Certificate from the High Court is mandatory for appeals originating from Ward Tribunals, and should not be taken perfunctorily or lightly by the certifying High Court and by the parties to the impending appeal. A certificate of the High Court predicates the jurisdiction of the Court in land matters, so much so, this Court has oftentimes stated that a decision of the High Court refusing to grant a certificate on a point of law under section 47(2) of Land Disputes Courts Act, is final and no appeal against it lies to this Court: (see **Timothy Alvin Kahoho v. Salum Adam Mfikirwa**, Civil Application No. 215 of 2013 (unreported)). To underscore the significance of the certificate, **we may add that where the High Court has certified points of law in appeals originating from Ward Tribunals, the grounds of appeal filed in the Court must substantially conform to the points of law which the High Court has certified.**"[Emphasis added]*

It is manifest that the first ground of appeal replicates the first certified point but none of the second to fifth grounds of appeal was specifically certified by the High Court. If the appellant wished to have them considered by this Court as specific issues, he should have framed them as such and had them considered and certified by the High Court. While agreeing with



Mr. Emmanuel that the said four grounds raise specific issues within the context of the larger question on the title to the property, we have no jurisdiction to deal with those specific issues as such but that we are enjoined to deal with the all-embracing question certified by the High Court as to who the lawful owner of the property is.

We now deal with the merits of the appeal, starting with the contention in the first ground of appeal. It was Mr. Emmanuel's contention that the respondent's appeal to the District Tribunal was time-barred primarily because it was lodged on 7<sup>th</sup> May, 2010, which was more than nine months after the Ward Tribunal had handed down its decision on 27<sup>th</sup> July, 2009. He submitted that the appeal ought to have been lodged within forty-five days of the delivery of the decision in terms of section 20 (1) of the LDCA. Although the learned counsel acknowledged that the record of appeal shows at page 119 that the respondent had applied to the District Tribunal vide Miscellaneous Application No. 2 of 2010 for extension of time to lodge the appeal, he argued that the application was manifestly incompetent primarily because it was not supported by any affidavit and that no enabling provision under which it was made was cited. On being queried by the Court, Mr. Emmanuel acknowledged that the District Tribunal granted the respondent

the extension of time sought on 30<sup>th</sup> March, 2010 and that the said order was not challenged on appeal to the High Court.

For his part, the respondent, rather tersely, submitted that he duly appealed to the District Court upon being granted extension of time.

It is common ground that the respondent's appeal to the District Tribunal against the Ward Tribunal's decision dated 27<sup>th</sup> July, 2009 ought to have been lodged within forty-five days of the delivery of that decision in terms of section 20 (1) of the LDCA. It is undisputed that the appeal, instituted on 7<sup>th</sup> May, 2010, was filed well beyond the said prescribed period. Nonetheless, it is, indeed, evident at pages 33, 34 and 119 of the record of appeal that the respondent so lodged the appeal after he had duly sought and obtained extension of time on 30<sup>th</sup> March, 2010. As already hinted, the said order of the District Tribunal was never challenged on appeal. With respect, we cannot take seriously Mr. Emmanuel's submission, challenging the competence of Miscellaneous Application No. 2 of 2010 in which the extension was granted. It is plainly misconceived. So long as the said order was neither challenged nor overturned on appeal by a superior court, it remained valid and that the respondent rightly acted on it in lodging his appeal in the District Tribunal on 7<sup>th</sup> May, 2010, which happened to be about

thirty-seven days after the extension was granted. The first ground of appeal is plainly unjustified.

We now turn the second and final ground of appeal by which we are enjoined to determine who between the parties is the lawful owner of the property.

Mr. Emmanuel's argument in support of the appeal was, in the main, threefold. First and foremost, he attacked the validity of the 1992 sale agreement, upon which the respondent alleged to have acquired his title to the property, on the ground that it was not approved by the Village Council. Citing **Methuselah Paul Nyagwaswa v. Christopher Mbote Nyirabu** [1985] T.L.R. 103, he contended, rightly so, that without the approval of the Village Council no person could transfer to any other person his right to the use of land or dispose of his house in a village. Any purported sale or transfer without such approval would be void and ineffectual. Secondly, the learned counsel argued that since there was no proof of the transfer of title to the respondent, the finding by the High Court that the respondent occupied the property from 1992 until when the Village Council handed it over the late Shabani Hamisi's family on 22<sup>nd</sup> September, 2005 was unjustified. Thirdly, he faulted the High Court's finding that Emmanuel Shabani and Zephania

Shabani lacked capacity to sell the property to the appellant. Elaborating, he said it was amply established in evidence that the two brothers acquired the property upon the decision of the Village Council and, therefore, they had capacity to transfer the title to the appellant.

In rebuttal, the respondent basically maintained that he was the lawful owner of the property and urged that the High Court's decision be upheld.

In resolving the question at hand, we think it is necessary, at the very outset, to reiterate the basic rule that he who alleges has the burden of proof as per section 110 of the Evidence Act. It is also essential to keep in mind that the standard of proof in a civil case is on a preponderance of probabilities. Therefore, the court will sustain such evidence that is more credible than the other on a particular fact to be proved – see **Paulina Samson Ndawavya v. Theresia Thomas Madaha**, Civil Appeal No. 45 of 2017 (unreported). In that case, the Court also underscored that the burden of proof never shifts to the adverse party until the party on whom the onus lies discharges his burden and that the burden of proof is not diluted on account of the weakness of the opposite party's case.

As it was the appellant who sued the respondent in the Ward Tribunal claiming title to the property, he bore the burden of proof. In proving his claim, he adduced, as stated earlier, that his title derived from purchasing the property in 2007 from Emmanuel Shabani and Zephania Shabani, the sons of the late Shabani Hamisi who previously owned the property. It is undisputed that the two brothers took possession of the property on 22<sup>nd</sup> September, 2005 under the supervision of the village functionaries following the revocation of the respondent's title to the property.

At this point, we wish to make four pertinent observations: first, that the alleged sale to the appellant, unlike the sale to the respondent, is not substantiated by any documentary proof. Secondly, apart from the word of mouth that the sale was made before the Village Executive Officer and that it had the seal of approval of the Village Council, no documentary proof to that effect was tendered at the trial. Thirdly, the evidence is so overwhelming that after the 1992 sale by the late Shabani Hamisi to the respondent, the respondent had the use and occupation of the property until 22<sup>nd</sup> September, 2005 when the village authorities took and handed it over to the late Shabani Hamisi's family through Emmanuel Shabani and Paulo Shabani. Indeed, that is not only discernible but also inferable from the handing over letter made

by the Village Executive Officer dated 26<sup>th</sup> September, 2005, shown at page 104 of the record of appeal. Fourthly, that since the property was handed over as the late Shabani Hamisi's property, none of the said Emmanuel Shabani, Zephania Shabani and Paulo Shabani had individual or joint title to transfer it to another person. Arguably, the property became a portion of the estate of the late Shabani Hamisi to be administered by a duly appointed administrator. No evidence was led that the said Emmanuel Shabani and Zephania Shabani dealt with and sold the property as administrators of the deceased's estate.

On the other hand, it is undoubted that the respondent bought the property from the late Shabani Hamisi on 23<sup>rd</sup> March, 1992 vide a sale agreement, which was admitted in evidence. This fact is acknowledged by all the parties as well as the handing over letter alluded to earlier and the letter by the Village Executive Officer dated 14<sup>th</sup> July, 2005 (at page 105 of the record of appeal) informing Paulo Shabani of the revocation of the respondent's title to the property. As hinted earlier, the revocation was mainly premised on the ground that the purported transfer of title to the respondent in 1992 was not approved by the Village Council. We should pause and observe that the respondent did not dispute that the appellant's

claim that the disposition of the land in his favour was made without the approval of the Village Council. On that basis, we would agree with Mr. Emmanuel, on the authority of **Methuselah Paul Nyagwaswa** (*supra*), that the purported transfer was void and ineffectual for want of the requisite approval.

Yet, it is in the evidence that the respondent took possession of the property immediately after the sale but as early as 1994 one of the deceased's sons, Emmanuel Shabani, started battling him in a bid to recover the property. We have already stated that the respondent persisted with the said use and occupation until 22<sup>nd</sup> September, 2005 when the village authorities took possession of the property and handed it over to the deceased's family. Since for want of the requisite approval from the Village Council the respondent did not acquire any title to the property in 1992, logically his use and occupation thereof rendered him a trespasser thereon for the whole period of thirteen years of his occupation. In the premises, the learned appellate Judge was justified in his view that the deceased or his family ought to have reclaimed the property before the statutory limitation period of twelve years expired. Certainly, based upon the doctrine of adverse possession, whatever claim of title the deceased's estate had was

extinguished. To the extent that the Village Council purportedly revoked the respondent's title for want of requisite approval to return the title to the deceased's family without considering that the said family's claim had been extinguished, the council's decision was a nullity and ineffectual.

Before we take leave of the matter, we think it is necessary to remark that the learned appellate Judge slipped into error by nullifying the proceedings before the Ward Tribunal and those of the District Tribunal on the ground that the appellant had no locus standi to institute the suit. At the Court's prompting, Mr. Emmanuel admitted that the said aspect of the learned Judge's decision was confusing and untenable.

In our considered view, the alleged absence of standing to sue would not have vitiated the trial or appellate proceedings rendering them legally void. At any rate, in the instant case the appellant had a clear standing to sue as he staked his claim of title upon the sale agreement between him and the two brothers. Whether the two brothers had capacity to transfer title to him by way of sale or not was an issue to be tried and determined upon the evidence on record. Accordingly, the learned Judge's nullification order cannot be left to stand. Invoking our revisional jurisdiction under section 4 (2) of the Appellate Jurisdiction Act, we quash it.



Based on the foregoing discussion, we are satisfied, on the totality of the evidence on record, that the appellant failed to establish his claim of title on a preponderance of probabilities. Accordingly, we dismiss the second ground of appeal.

In the upshot, we hold that the appeal is without merit. It stands dismissed with costs.

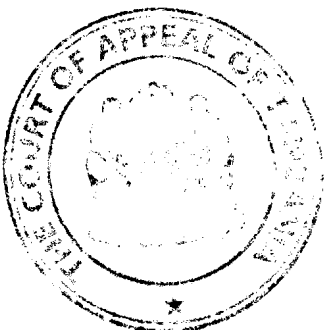
**DATED at ARUSHA** this 20<sup>th</sup> day of February, 2023.

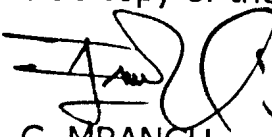
G. A. M. NDIKA  
**JUSTICE OF APPEAL**

M. C. LEVIRA  
**JUSTICE OF APPEAL**

O. O. MAKUNGU  
**JUSTICE OF APPEAL**

The Judgment delivered this 21<sup>st</sup> day of February, 2023 in the presence of Mr. Quamara A. Peter, learned counsel for the appellant and in the absence of the respondent but represented by her uncle called Ansila Cosmass, is hereby certified as a true copy of the original.



  
E. G. MRANGU  
**SENIOR DEPUTY REGISTRAR**  
**COURT OF APPEAL**