

**THE UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**IN THE HIGH COURT OF TANZANIA**

**DISTRICT REGISTRY OF MBEYA**

**AT MBEYA**

**PC. CIVIL APPEAL NO. 17 OF 2019.**

*(From the District Court of Momba District, at Chapwa in Civil Appeal No. 13 of 2018. Originating from Civil Case No. 150 of 2018 in Tunduma Urban Primary Court).*

**1. HASSAN KIBONA.....1<sup>ST</sup> APPELLANT**

**2. MHIBU LANGUKA.....2<sup>ND</sup> APPELLANT**

**VERSUS**

**AMANYISYE KAMWELA.....RESPONDENT**

**JUDGMENT**

**18. 11. 2020 & 16. 02. 2021.**

**UTAMWA, J:**

In this second appeal, the two appellants HASSAN KIBONA AND MHIBU LANGUKA (first and second appellant respectively or appellants cumulatively) challenged the decision of the District Court of Momba District, at Chapwa, (the District Court) in Civil Appeal No. 13 of 2018. The matter originated in the Primary Court of Tunduma Urban (the Trial Court) in Civil Case No. 150 of 2018. Before the Trial Court, the respondent AMANYISYE KAMWELA instituted a civil suit against the appellants for

recovery of a motor vehicle (or the vehicle), make Scania with Registration No. T. 260 BQC allegedly owned by the late GIDEON KAMWELA (the deceased).

The background of the matter as gathered from the record of both the trial court and the District Court goes thus; the first appellant is a business man. He is doing business in Zambia and he resides there. In 2010 he bought the vehicle with Zambian Registration No. ABF 3055. He brought the same to Tanzania and changed its registration accordingly in 2011. It was thus, registered in his name as No. T. 260 BQC and the Registration Card/certificate was accordingly issued. In the same year, i.e. in 2011 the first appellant entrusted the said motor vehicle to the deceased (as the supervisor) for business purpose. The second appellant was employed by the first respondent as the driver of the said motor vehicle after being introduced to him (first appellant) by the deceased. The first appellant however, told the second respondent that, everything regarding supervision of the motor vehicle would be in the hands of the deceased. The second appellant, therefore, was accountable to the deceased.

According to the second appellant, in 2015 the deceased transferred the ownership of the vehicle from the first appellant's name to his own name (the deceased) for the reason that, the first appellant's TIN-Number had problems. This fact however, was not known to the first appellant until in 2018 upon the deceased meeting his demise.

Following the demise of the deceased (on 24/7/2018), the respondent, AMANYISYE KAMWELA applied for the letters of administration vide Probate Case No. 23 of 2018, before Tunduma Urban Primary Court. He was successfully appointed the administrator of the deceased estate. Among the estates he was to collect for distribution to the beneficiaries was the vehicle at issue. Nevertheless, the said vehicle was not seen since it was in the hands of the second appellant. Due to that fact, the trial court ordered for the vehicle to be handed over to the respondent as part of the deceased's estate. The second appellant told the first appellant about the order. It was at this time when he informed him about the transfer made by the deceased. The first appellant denied to have knowledge of the said transfer.

In that regard, the respondent instituted the civil suit in the trial court as hinted earlier. The trial court decided the said suit in favour of the

respondent. It held that, since the respondent had tendered the vehicle's registration card/certificate bearing the name of the deceased, the same belonged to the deceased. The trial magistrate also rejected the claim by the first appellant that, the deceased had changed the ownership of the vehicle without his consent. In his reasons for decision, the trial magistrate stated that, it was impossible for the second appellant (driver) to know about the transfer of ownership in 2015 and remain mute, i. e without informing his employer (the first appellant).

Being discontented by the decision of the trial court, the two appellants appealed to the District Court as hinted previously. Before the District Court, the learned magistrate ordered for additional evidence under the provisions of section 21 (1) (a) of the Magistrates' Court Act, Cap. 11 R.E 2002 (Now R.E 2019), henceforth the MCA. In the additional evidence, the respondent made an official search from the Tanzania Revenue Authority (the TRA). This is an institution with the mandate of *inter alia*, approving motor vehicles transfers from one owner to another. The search results indicated that, the first appellant was the first owner of the motor vehicle before it was transferred to the deceased. However, in that report the TRA promised to avail other documents related to the transfer later

upon finding them. Unfortunately, until the District Court sat to compose the impugned judgement, such other documents had not been made available by the TRA.

The District Court finally concluded that, the transfer of ownership from the first appellant to the deceased had elements of forgery. He decided so because; there was no sale agreement between the parties. It further held that, the transfer was ineffective since there were no other documents relied upon in making the said transfer. Besides, it blamed the first appellant for gross negligence since he did not make a follow up concerning the transfer. The District Court thus, quashed and set aside the proceedings and judgment of the trial court. It also ordered for the sale of the vehicle at issue and the proceeds of sale to be divided equally between the first appellant and the respondent. The appellants were again, aggrieved by that decision of the District Court hence this second appeal.

In the petition of appeal, the appellants preferred three grounds of appeal as follows:

1. That, the appellate court (District Court) erred both in law and facts for misdirecting itself in directing that the motor vehicle in question

be sold and be divided to the parties equally while the respondent had failed to prove how the transfer to the deceased was effected.

2. That, the Appellate Court (District Court) erred both in law and facts for not considering the evidence of the appellants that the motor vehicle was not the property of the deceased.
3. That, had the appellate court properly directed its mind on the trial court's record, it could have discovered that, the respondent had failed to prove the ownership of the motor vehicle.

Owing to these grounds of appeal, the appellants urged this court to allow the appeal and quash the decisions of the lower court (the District Court). They also prayed for costs.

The respondent objected the appeal. It was thus, heard by way of written submissions. The appellants were represented by Mr. Alfred Chapa, learned counsel, while the respondent was advocated for by Ms. Neema Saluni, learned counsel.

This court also ordered the parties to address it on the issue of whether or not the proceedings and judgment of the trial Primary Court offended the provisions of section 7 (2) of the MCA and rule 3 and 4 of the

Magistrates' Court (Primary Courts) (judgment of court) Rules, GN.No. 2 of 1988. This is because, this court sniffed some irregularities in the proceedings of the trial court.

In their respective submissions regarding the grounds of appeal, the parties also accordingly, argued on the concern raised by the court. In their arguments, they cited the decision by the Court of Appeal of Tanzania (the CAT) in **Neli Manase Foya v. Damian Mlinga, Civil Appeal No. 25 of 2002** (unreported) to support the contention that, the primary court was well constituted since it was held by one magistrate and not less than two assessors. Its judgment was proper as it was signed by the magistrate and the assessors who participated in the hearing of the case before the trial court. The record in the matter at hand also showed that, in each day of hearing the trial magistrate sat with two assessors. Owing such consensus of the arguments, I agree with the parties that, the trial court did not offend the provisions of the law cited above. I thus, proceed to consider the merits of the appeal.

According to the nature of the grounds of appeal, this court is of the view that, the three grounds revolve around one major ground that, the District Court failed to evaluate the evidence and thus, reached into a

wrong decision on the ownership of the vehicle. The only issue for determination is thus, *whether or not, the first appellate court (the District Court) properly evaluated the evidence on record.*

In his submissions in chief, the appellant's counsel argued that, the evidence before the trial court shows that, the first appellant had handed over the motor vehicle with all documents to the deceased. This was due to the fact that, the first appellant resides in Zambia, but wished his motor vehicle to operate in Tanzania. He also argued that, the Exhibit D. 4 (the report from the TRA following the request by the respondent's counsel), shows that, the transfer was made in 2015 from the first appellant to the deceased. However, the same TRA confirmed that, there was no any other document showing how the transfer was made. He thus, concluded that, the respondent did not prove his case at the standard required in civil case. The counsel thus, argued that, the District Court wrongly reached at its decision.

In the replying submissions, the respondent's counsel also blamed the District Court for its decision. She contended that, it introduced the issue of forgery while the same was supposed to be disposed of by way of criminal proceedings. This is because, in criminal cases, the standard of



proof is different from the one in civil cases. She further blamed the District Court for ordering additional evidence from the TRA, which gave a report in favour of the respondent. The respondent's counsel added that, the first appellant intended to deprive the deceased's heirs of their rights since he is in position to know what exactly transpired before the transfer. She thus, urged this court to uphold the decision made by the trial court since it was well reasoned than that of the District Court.

In rejoinder submissions, the appellants' counsel basically reiterated what he had submitted in his submissions in chief.

Considering the grounds of appeal, the respective submissions by the parties, the record and the law, it is not disputed that, the first appellant bought the vehicle at issue from Zambia, he changed it to Tanzania Registration numbers. It is also not disputed that, in 2015, the same vehicle was transferred from the name of the first appellant to the name of the deceased. The first appellant and the deceased were friends, and the first appellant handed over the vehicle to the deceased for his supervision before it was transferred in the latter's name.

Owing to the above narrated undisputed facts, I am of the view that, indeed, the evidence adduced by the respondent (who was the plaintiff) before the trial primary court that, there was transfer of the motor vehicle from the first owner (first appellant) to the current owner (the deceased) was credible. Again, there is undisputed evidence that the second appellant (the driver of the motor vehicle) knew about the transfer of the ownership from the first appellant to the deceased since 2015. He however, remain mute without informing the first appellant of the said transfer until when the motor vehicle was intercepted following the order made by the trial court. This order was made in the course of assisting the respondent in the proper administration of the deceased estate. This passive conduct of the second appellant was an acknowledgement in disguise that, the transfer was genuine.

The decision by the District Court that there was forgery in transferring the motor vehicle from the first appellant to the deceased was not supported by any evidence. In fact, the report (letter dated 7<sup>th</sup> February, 2019) from the TRA (placed in the record as exhibit D.4) which was tendered before District Court as additional evidence also supported the fact that, the new owner of the vehicle was the deceased. The report

further showed that, the TRA was still tracing some other documents used to effect the transfer. This did not however, conclusively mean that there were no such other documents in the office of the TRA supporting the transfer. This fact did not also prove in any way that the transfer was a forgery.

My further view is that, the registration card/certificate of a motor vehicle constitutes, in law, good evidence that the registered owner appearing in the card/certificate is the lawful owner of the motor vehicle, unless evidence is adduced to the contrary; see section 15 of the Road Traffic Act, No. 30 of 1973. In the matter at hand, no such evidence was adduced to show that the deceased, whose name appears in the registration card/certificate as the second owner of the vehicle, was in fact, not the lawful owner. Indeed, even the report from the TRA itself did not suggest any other fact apart from those embodied into the registration card/certificate.

Moreover, I have considered the directive by the District Court that the vehicle should be sold and the sale proceeds divided between the first appellant and the administrator of the deceased estate (the respondent). This directive was inconsistent with the finding by the same District Court

that the transfer of the vehicle to the deceased was a forgery. This is because, had it been true that the transfer was a forgery, the District Court could not again order for the equal division of the sale proceeds of the motor vehicle. A sober court like the District Court could not permit one to benefit from the alleged forgery.

Again, the above directive by the District Court for the sale of the vehicle and the division of the sale proceeds was, in my settled view, untenable. This is because, that decision suggested that the District Court had a view in mind that the evidence adduced by both sides of the case had tallied and weighed equally. Nevertheless, this cannot be a proper finding in law. The standard of proof in civil proceedings is always on the preponderance/balance of probabilities. Regulation 6 of the Magistrates' Courts (Rules of Evidence in Primary Courts) Regulations, GN. No. 22 of 1964 as amended by GN. No. 66 of 1972 for example, sets the standard of proof in civil proceedings. It provides that, in civil cases, the court is not required to be satisfied beyond reasonable doubt that a party is correct before it decides the case in its favour, but it shall be sufficient if the weight of the evidence of one party is greater than the weight of the evidence of the other. The corresponding provisions under the Evidence

Act, Cap. 6 R. E. 2019 is section 3(2). It clearly guides that, a fact is said to be proved when, in civil matters, including matrimonial causes and matters, its existence is established by a preponderance of probability.

It follows thus that, in civil proceedings like these under discussion, the party who adduces evidence which weighs more than the other, will be declared the winner in the proceedings before a primary court or any other court higher than it. In civil cases thus, evidence cannot tally in any way. From the record considered above, it is clear that the respondent's evidence weighed more than that of the two appellants. This is because, the respondent proved the transfer of the vehicle and no evidence was adduced by the appellants to challenge it. Again, the trial primary court properly evaluated that evidence and reached to a just and fair decision.

Due to the reasons shown above, I answer the issue posed above negatively that, the District Court did not properly evaluate the evidence on record and thus, reached at an improper decision. I therefore, partly allow the appeal and partly dismiss it. I accordingly set aside the impugned judgement of the District Court and restore the proceedings of the trial primary. I further uphold its judgment. Each party shall bear his own costs

since the appeal has been partly allowed and partly dismissed. It is so ordered.



J.H.K. UTAMWA  
JUDGE  
16/02/2021.

16/02/2021.

CORAM; Hon. N. Mwakatobe, DR.

Appellant: present.

Respondent: present.

BC; Mr. Patrick, RMA.

Court: Judgment is delivered this 16<sup>th</sup> February, 2021 in the presence of the parties. Right to appeal explained.

N. MWAKATOBÉ  
DEPUTY REGISTRAR  
16/02/2021.