

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**MUSOMA SUB REGISTRY**

**AT MUSOMA**

**MISC. LAND APPLICATION NO 95 OF 2021**

*(Arising from the judgment of the High Court of Tanzania in Musoma District Registry at Musoma in Misc. Land appeal No 22 of 2021, Arising from Land appeal no 21 of 2020 from District Land and Housing Tribunal for Tarime at Tarime, Originating from Land case No 17 of 2018 in Mkoma Ward Tribunal)*

**JERUSA S/O E. NYANG'ORO ..... APPLICANT**

***VERSUS***

**WILKISTA S/O A. OYAYA ..... RESPONDENT**

**RULING**

28<sup>th</sup> February & 18<sup>th</sup> March 2022

**F.H. MAHIMBALI, J.:**

The applicant in this case was the respondent at the trial Ward Tribunal of Mkoma which ruled in favour of the respondent herein. Aggrieved by that decision, he successfully appealed before the DLHT Tarime. As that was not the end of the match, the respondent herein successfully challenged the DLHT's decision before the High Court (Kahyoza, J). The applicant still believing that it is not over until it is over, he wishes to toss his last chance of his legal right before the highest Court of the Land, the Court of Appeal of Tanzania.

This application is thus for a certification on point of law under section 47(3) of the LDCA. This Court is thus called upon to determine whether there is a point of law worth of determination by the Court of Appeal. By way of chamber summons supported by an affidavit of the applicant, this Court is called upon to determine three proposed points by law for the determination of the Court of Appeal, namely: -

- a. Whether the doctrine of adverse possession was rightly applied in the circumstances of this case.*
- b. Whether the sale agreement between the applicant and the vendor was a valid contract in the circumstances of this case*
- c. Whether the applicant's mother had a good title over the disputed land.*

During the hearing of this application, the applicant was represented by Mr. Leonard Magwayega while the respondent who resisted the application was represented by Ms Rachael, both learned advocates.

While adopting the reasons for the application contained into the applicant's affidavit, Mr. Magwayega submitted that as per law, the applicant has met the requisite conditions of obtaining this court's certificate on point of law to CAT. He clarified that under paragraph 5 of the applicant's affidavit, it is clear that as this matter originates from the Ward Tribunal one can only access the CAT Upon there being

certification by this court that there is a point of law dully involved for the CAT's consideration. In consideration of the respondent's counter affidavit, he differed that this matter is unworthy of consideration by CAT. As the points of law are well stipulated, he argued that this case is fit one that a certificate on point of law is issued. Adverse possession though is a matter of fact, but it's now an accepted legal principle. Whether it was properly invoked and considered it is a point of law to be resolved by the CAT, he argued. He submitted further that, this is point of law for consideration by the CAT to determine whether the High Court (this court) rightly applied the legal doctrine.

*Secondly*, he is of the considered view that this Court should find it necessary that the CAT to determine the legality of the said agreement between the applicant and vendor.

*Thirdly*, his point is whether it was proper for the court to hold that the applicant's mother **Nerea Nyangwiro** was authorized by **Mr. Abdalah Kimbo** (the original owner of the suit land to only use the suit land just for cultivation and for sometimes (not permanently), meaning that the said applicant's mother has no good title to the suit land.

On these three issues, he is of the considered view that the decision of this Court was not rightly reached as per law. He thus

humbly prayed that this Court to certify as per law, as all these grounds suffice to warrant the grant of the application.

Countering the application and its submission, Ms Rachael for the respondent submitted that it is true that under section 47 (3) of LDCA, R. E. 2019 gives a guideline how land disputes from Ward Tribunals upon being decided by the High Court, can access CAT. It is by certification that there is a point of law existing that warrants its determination by the Court of Appeal. However, she considered the current matter, the preferred points as not sufficing legal points for the determination by the Court of Appeal.

Whether the doctrine of adverse possession was rightly invoked by the Court, it was her submission that the doctrine of adverse possession mainly centres on points of facts. It is one to adduce facts of the case to support his position. It was her submission that in this matter, the High Court rightly ruled on that. As the evidence is clear on that, certifying it now to be considered by CAT, is disguising.

Submitting on the validity of the said contract, she argued that though the same is a legal point, however, in the current case, there are no compelling circumstances to question on the validity of contract the same being dully certified by the local leaders of the area.

With the third ground of certification, that whether there was good title, she submitted that this is closely linked with the first ground of appeal on adverse possession. She submitted further that the evidence is clear that the appellant had never been owner but only invitee. The law is an invitee cannot acquire title of land (see **Swalehe VS Salim (HCD)** 1972 140.

Having considered the application that much, Ms Rachael concluded that these grounds of appeal for certification, in her considered view are devoid with merits, thus called upon this Court to strike them out with costs.

Having heard both submissions, the vital question now is whether this application is meritorious as per law. In the case of **DORINA N. MKUMWA VERSUS EDWIN DAVID HAMIS**, Civil Appeal no. 57 of 2017, the Court of Appeal regarding application on certificate on point of law, emphasised that: -

*"It is therefore self-evident that applications for Certificates of the High Court on points of law are serious applications. Therefore, when High Court receives applications to certify point of law, we expect Rulings showing serious evaluation of the question whether what is proposed as a point of law, is worth to be certified to the Court of Appeal. This Court*

*does not expect the certifying High Court to act as an uncritical conduit to allow whatsoever the intending appellant proposes as point of law to be perfunctorily forwarded to the Court as point of law”.*

The point of consideration by this court, is whether this application is worth of consideration for its grant. I have considerably digested the serious arguments by the applicant’s counsel and equally gone through the decision of this Court in regard to the application of the two principles of law: Adverse Possession and the validity of sale agreement of the said in dispute. Whereas this Court ruled that the applicant had not acquired land by adverse possession as claimed considering the fact that the applicant’s mother Nerea E. Nyang’oro was just authorised to use the said land by Mr. Abdallah Kimbo, the owner, on the other hand the respondent maintains that adverse possession is a question of fact and it is settled that the evidence is clear that the owner of the said land is Mr. Abdallah Kimbo. The applicant’s mother was just an invitee. Since the law is *"an invitee cannot establish adverse possession against host even if the invitee had made the permanent improvement"* (see **Mukyemalila & Thadeo Vs. Luilanga** [1972] HCD 4. In the instant case, the said Nerea E. Nyang’oro who is the mother of the applicant is now dead. The applicant – Jerusa E. Nyang’oro who claims title of her

deceased mother as administratrix of her estate, still maintains ownership of that land. In the circumstances of this, for better legal position, it is a point of law worth of for determination by the Court of Appeal, whether the doctrine of adverse possession was rightly applied in the circumstances of this case against the applicant.

Secondly, this Court is called upon to certify a legal point on the issue of sale agreement between the applicant and the vendor of the suit of land whether this Court was proper in deciding that. On the face of it you cannot see where in the said judgment, this issue was tackled. However, the same was enjoined when dealt with by the Court in determining the issue of adverse possession in a way it determined the validity of the sale contract between the applicant and the vendor. That said, it qualifies to be a legal point worth of determination by the Court of Appeal.

The third proposed legal point is whether the applicant's mother Nerea E. Nyangóro had a good title over the disputed land. In my thorough reading of the submission of the applicant and what the High Court ruled on this, the issue is well taken into board in the first legal issue. It is thus just a replica. The same is not certified.

That said, the application is allowed on two legal points which are certified by this Court pursuant to section 47(3) of the LDCA that:

- a. Whether the doctrine of adverse possession was rightly applied by the High Court in the circumstances of this case.
- b. Whether the sale agreement between the applicant and the vendor was a valid contract in the circumstances of this case

From the foregoing, I therefore I allow the application and certify these two as pure points of law worth of determination by the Court of Appeal.

It is so ordered.

DATED at MUSOMA this 18<sup>th</sup> day of March, 2022.



  
F. H. Mahimbali

JUDGE

**Court:** Ruling delivered this 18<sup>th</sup> day of March, 2022 in the presence of the Marry Joachim for Rachael Onesmo for the respondent, Gidion Mugo RMA and the appellant being absent.

  
F. H. Mahimbali

JUDGE

18/03/2022