

IN THE HIGH COURT OF TANZANIA

AT MTWARA

MISC. CIVIL APPLICATION NO 2 OF 2013

ARISING FROM PC MATRIMONIAL APPEAL NO 4 OF 2011

OF THE HIGH COURT OF TANZANIA AT MTWARA

MSAFIRI SELEMANI LALIKILA APPELLANT

VERSUS

ARABIA MOHAMEDI RESPONDENT

R U L I N G

13th day of June 2013 & 26th day of July, 2013

MZUNA, J.:

Msafiri Selemani Lalikila is applying for leave to appeal to the Court of Appeal of Tanzania against the decision of this court (Hon. Mipawa, J) in (PC) Matrimonial Appeal No. 4 of 2011. He is seeking to challenge the order which directed that the matrimonial assets which were acquired during the subsistence of their marriage be sold and the proceeds of sale be divided and the respondent be awarded 30% if the applicant wished to retain the properties. This was opposed to the concurrent judgments of the two lower courts which said the respondent be awarded 1,500,000/-, two goats and one cow as her additional share of the alleged matrimonial assets.

The first issue is whether or not this court is properly moved?

The applicant in his application which is by chamber summons supported by an affidavit has cited section 5 (1) (c) of the Appellate Jurisdiction Act Cap 4 R.E. 2002. This is an improper citation as there is no Appellate Jurisdiction Act Cap 4 R.E. 2002 instead there is the Appellate Jurisdiction Act Cap 141 R.E. 2002, so this court is not properly moved by this application.

The position of the law is very clear that failure to cite relevant provision of law which enables the court to hear and determine such application render the application incompetent as the court is not properly moved. This position was well stated in the case of **ES – KO – International Inc. Kigoma Vs. Vicent J. Ndugumbi**, Civil Appeal No. 22 of 2009 C.A T (unreported). This defect could by itself make the application struck out. However, I should go further.

The second point which forms my second issue is whether, given the fact that the matter sought to be appealed against originated from the Primary court, did the applicant properly cite the proper provision?

Section 5 (2) (c) of the Appellate Jurisdiction Act (CAP 141 R.E. 2002) requires this court to certify that there are points of law involved in the decision which ordinarily forms the basis of this application. To my surprise, the applicant cited section 5 (1) (c) of the Appellate Jurisdiction Act instead of section 5 (2) (c) of the said ACT. Failure to cite such relevant and specific provision of the law renders the application fatal. This position was well restated in the case of **Antony J. Tesha Vs. Anita Tesha**, Matrimonial Civil Appeal No. 2 of 1999 (C.A.T) unreported. It was held that such defect

renders the application fatal. So this application is incompetent and deserve, as I hereby do, to be struck out.

The third issue is whether the application is accompanied by the requisite documents?

The provision of Rule 49 (3) of the Tanzania Court of Appeal Rules, 2009 in very clear terms mandatorily requires every application for leave to appeal to the court of appeal filed in High Court should be accompanied by a copy of the order of the High Court. I have perused the chamber application filed by the applicant and I have seen no such order of the High Court sought to be appealed against. The applicant filed a chamber summons supported by his affidavit and the judgment only. The applicant's application did not therefore satisfy the requirements of the law. It is equally incompetent.

For the above reasons and for avoidance of doubts the applicant's application which as I have said did not comply with the mandatory legal requirements is incompetent and is accordingly struck out with costs.

M.G. MZUNA,
JUDGE
26/7/2013

Court: Ruling delivered this 26th day of July 2013 in the presence of parties.


M.G. MZUNA,
JUDGE
26/7/2013