

**IN THE HIGH COURT OF TANZANIA  
DAR ES SALAAM DISTRICT REGISTRY  
AT DAR ES SALAAM**

**PC. CIVIL APPEAL NO. 74 OF 2017**

(Originating from the Decision of Ilala District Court  
in Civil Appeal No. 42 of 2016)

**AMINA HARUBU MAZONGERA.....APPELLANT**

**VERSUS**

**MOHAMED HAMADI KING'ANDA.....RESPONDENT**

**JUDGMENT**

**MKASIMONGWA, J.**

The Appellant is dissatisfied by the decision of Ilala District Court in Civil Appeal No. 42 of 2016 which was delivered on 14/3/2016. She therefore appeals to the court against it. She has the following grounds of appeal.

1. That, the Honourable trial magistrate erred both in law and in fact for not ordering equal division of matrimonial properties which were jointly acquired during the subsistence of their marriage.
2. That, the Honourable trial magistrate erred in law and in fact for not taking into consideration the appellant's evidence regarding the contribution towards acquisition of matrimonial properties.

3. That, the Honourable trial magistrate erred in law and in fact for failing to provide reasons for such decision and point of determination.
4. That, the Honourable trial magistrate erred in law and in fact for not making analysis of the evidence tendered by the both parties and findings on the same.

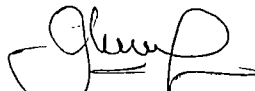
When the appeal came up for hearing Mr. Talume and Mr. Mutabuzi, Advocates, appeared for the Appellant and Respondent, respectively. Before going into the merits of the appeal; upon having perused the record of the District Court, it is clear that the grounds of appeal as listed above are a copy and paste of those the appellant had lodged in the District Court when challenging the decision of the Primary Court. The question is whether this appeal is properly in court. This comes from the term “**Trial Magistrate**” used in the Memorandum of Appeal. In my view, the “**Trial Magistrate**” is the magistrate who presides over a matter adjudicated in the trial court, which is the court of original jurisdiction where evidence and testimony are first introduced, received and considered before a finding of both fact and law is made. The “**trial court**” is distinguished from the “**appellate court**” which literally means the court that hears appeals from the decisions of the trial court. It may be the court of first instance or second instance that is empowered to hear an appeal of the trial court.

In this matter going by the Memorandum of Appeal which as said earlier, is the copy and paste of that filed in the first appellate court, it is evident that the appellant is not challenging the decision of the District Court, which set in its appellate jurisdiction. He directly challenges, as the second bite, that decision made by the trial court. This is against the requirement of the law as it is provided for under **Section 20 of the Magistrates Court Act [Cap. 11 R.E 2002]** that where the Primary Court sits as the Court of first instance empowered to exercise its original jurisdiction appeals should be instituted lodged in the District Court.

As this appeal challenges the decision of the trial magistrate, although the aim was to challenge the decision of the District Court made under its appellate powers, and since no appeal lies to this Court directly from the Primary Court the same is misconceived. As such it is hereby struck out with costs.

Dated at Dar es Salaam this 14<sup>th</sup> of June, 2018.



  
J. Mkasimongwa

**JUDGE**

**14/6/2018**