

IN THE HIGH COURT OF TANZANIA

AT MWANZA

MISC. CIVIL APPLICATION NO. 115 OF 2017

(Originating from Pc. Matrimonial Appeal No. 9 of 2017)

WINNIE SHEBA SEMEAPPLICANT

VERSUS

HERMAN OMARY MGANGA RESPONDENT

RULING

5/12/2018 & 30/01/2019

Gwae, J

This ruling emanates from the judgment and decree of this court **(Matupa, J)** dated 11th August 2017 in which it was found that an order alienating property (protection of separate assets from that of matrimonial assets) is relief provided under section 160 of Magistrate Court Act, Cap 29 R. E, 2002. Hence the District Court's decision on its revisional jurisdiction ordering trial denovo on the ground that a divorce must be issued first before division of matrimonial assets was quashed and set aside.

Aggrieved by the decision of this court, the applicant is now praying for a certificate on points of law in order to challenge it to the Court of

Appeal. The applicant's application is brought under section 5 (2) (c) of the Appellate Jurisdiction Act Cap 141 Revised Edition, 2002 and the same is supported by his affidavit in which points of law for certification are proposed, these are;-

- i. Whether a court may order distribution of matrimonial assets of a presumed marriage without there being an application to rebut the presumption of marriage
- ii. Whether or not a District Court May revise an exparty (sic) judgment of the primary court without there being an application to set aside the exparty (sic) judgment
- iii. Whether or not a District Court may order substituted service by publication in absence of evidence that the party to be served is avoiding service
- iv. Whether a declaration of ownership of property is a relief available under section 160 (1) of the Law of the Marriage Act
- v. Whether the court may grant a relief on matters not pleaded nor addressed by the parties

During hearing, the applicant was duly represented by Mr. **Chama Matata**, the learned senior advocate while the respondent appeared in person. Mr. Matata briefly sought for consideration of the proposed points of law and an order as to costs.

The respondent, on the other hand had nothing to argue except to leave it for the court to decide however she prayed for a waiver of the costs on the ground that she is unemployed.

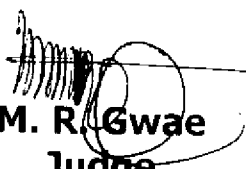
Upon my perusal of this court judgment and decision of the District Court of Nyamagana exercising its revisional jurisdiction as well as the parties' affidavits, I am of the considered opinion that there points of law proposed by the applicant which are eligible or fit for consideration by the Court of Appeal of Tanzania except the 3rd point herein above as the same requires evidence, Points which are now certified for determination by the Court of Appeal are;

- i. Whether a court may order distribution of matrimonial assets of a presumed marriage without there being an application to rebut the presumption of marriage
- ii. Whether or not a District Court May revise an ex-parte judgment of the primary court without there being an application to set aside the ex-parte judgment
- iii. Whether a declaration of ownership of property is a relief available under section 160 (1) of the Law of the Marriage Act
- iv. Whether the court may grant a relief on matters not pleaded nor addressed by the parties

That said, the applicant's application is hereby granted save for the 3rd point of law demonstrated by the applicant. Costs of this application shall abide the result of the intended appeal.

Order accordingly.




M. R. Gwae
Judge
30/01/2019