

IN THE HIGH COURT OF TANZANIA

(DODOMA DISTRICT REGISTRY)

AT DODOMA

MISC. CIVIL APPLICATION NO. 59 OF 2018

(Arising from the Judgment of the High Court of Tanzania at Dodoma in (PC) Civil Appeal No. 12 of 2018 from Civil Appeal No. 16 of 2017 of Iramba District Court at Kiomboi Original Civil Case No. 9 of 2017 of Ndago Primary Court)

YEGELA NTAMBIAPPLICANT

VERSUS

MHOLYA NHANGARESPONDENT

27/2/2020 & 17/2/2020

RULING

MASAJU, J.

The Applicant, Yegela Ntambi, sued the Respondent, Mholya Nhangha for adultery damages at Ndago Primary Court, Iramba District in Civil suit No. 9 of 2017. The Respondent claimed in the trial Court that, the Applicant and his alleged wife were legally divorced. The trial Court together with Iramba District Court ruled out that there was no divorce issued by any Court of law as it was alleged. Dissatisfied with the two lower Courts' decision, the Respondent appealed to the Court in PC Civil Appeal No. 12 of 2018 where it was decided that there was divorce issued. Aggrieved with the decision, the Applicant seeks leave of the Court to appeal to the Court of Appeal on a point of law.

The Applicant's Chamber Summons Application is made under section 5 (1) (c) and 5 (2) (c) of the Appellate Jurisdiction Act, [Cap 141] and Rule 45 (a) of the Tanzania Court of Appeal Rules, 2009 as amended by rule 6 of the Tanzania Court of Appeal (Amendment) Rules GN. No. 362 of 2017 supported by Affidavit of Yegela Ntarambi. The Applicant has so far lodged his Notice of Appeal to the Court of Appeal of Tanzania.

The Application was heard in the Court on the 27th day of January, 2020 in the presence of Mr. Lucas Komba, learned counsel for the Applicant and Mr. Fred Kalonga, the learned counsel for the Respondent.

The learned counsel for the Applicant prayed the Court to adopt the Applicant's Affidavit to form part of his submissions in support of the Application in the Court. He further added that, the said Affidavit expounds on the grounds and reasons for the Application, the point of law in particular thus;

"1. Whether the High Court had powers to overturn the concurrent finding of facts of the two Courts below and arrive at its own conclusion upon which decision has rested".

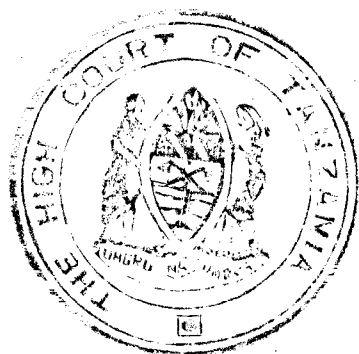
The learned counsel prayed the Court to grant the Application accordingly.

On his part, the Respondent did not file Counter Affidavit and the learned counsel for the Respondent did not contest the Application. He conceded for the Court to grant the Application if it deems fit to do so.

Since this is an Application for the Court to Certify if there is a point of law involved in the intended Appeal to the Court of Appeal, what was required of the Applicant was for him to demonstrate before the Court that there is a contentious legal issue worthy consideration and determination by the Court of Appeal.

Paragraph 4 of the Applicant's Affidavit together with the submissions by the Applicant in the Court on the alleged point of law shows clear that there is a point of law to be considered and determined by the Court of Appeal.

This Application is therefore, meritorious and the leave to appeal to the Court of Appeal is hereby granted accordingly.




GEORGE M. MASAJU

JUDGE

17/2/2020