

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MBEYA)
AT MBEYA

MATRIMONIAL APPEAL NO. 04 OF 2020

(Appeal from the District Court of Chunya at Chunya in Matrimonial Revision No. 01 of 2020. Originating from Makongolosi Primary Court in Matrimonial Cause No. 05 of 2019)

SELE MADINDA.....APPELLANT

VERSUS

MAWAZO KABOTORA.....RESPONDENT

JUDGEMENT

Date of Last Order: 29/07/2020
Date of Judgment: 03/09/2020

MONGELLA, J.

The parties in this appeal supposedly obtained a decree for divorce from Makongolosi primary court in Chunya District. Unsatisfied by the decree, the respondent wrote a letter to the District court of Chunya seeking for revision over the primary court decision. In its revisional order, the District court nullified the primary court decision. Aggrieved by the decision of the District court, the appellant has preferred this appeal on the following grounds:



1. *That the Hon. Magistrate erred in law and fact in quashing the judgement of the primary court without giving the parties a chance to address the court on the previous orders of separation.*
2. *That the Hon. Magistrate erred in law and fact by not providing legal reasons for his decision and he did not show any provision basing on his arguments for his decision.*
3. *That the Hon. Magistrate erred in law and fact by entertaining the matter which was improperly filed. On that aspect the Magistrate relied on a letter only which was not served to the appellant.*
4. *That the Hon. Magistrate erred in law and fact by using his revisional powers as alternative to appeal.*

The appellant was represented by Mr. Maula Tweve, learned advocate while the respondent appeared in person. For interest of justice to the unrepresented party, this Court ordered the appeal to be argued by written submissions. I commend both parties for adhering to the scheduled orders in filing their written submissions.

Arguing on the first ground of appeal, Mr. Tweve briefly submitted that the Hon. Magistrate erred in law and fact when he quashed the judgment of the primary court without giving the parties a chance to address the court on the previous orders of separation. He contended that the trial Magistrate abrogated the principle of natural justice which requires no one to be condemned unheard. He added that the omission to accord



parties the right to be heard is a violation of the Constitutional right enshrined under Article 6 (a) of the Constitution of the United Republic of Tanzania. He concluded that by ignoring the principle envisaged under the Constitution, the Hon. Magistrate erroneously quashed the judgment of the primary court. On this ground he prayed for the appeal to be allowed.

In reply, the respondent submitted that this ground of appeal is baseless because the trial primary court explained to the parties their right to appeal against the order of separation. He referred the court to the decision by the primary court dated 27th May 2019 which was signed by Hon. V. G. Ketapo. To the respondent's understanding, the act of the trial Magistrate explaining to the parties their right of appeal constitutes adherence to the principle of natural justice. He prayed for the court to find the ground of appeal baseless and dismiss the appeal.

Before proceeding with other grounds of appeal, I wish first to deliberate on this first ground of appeal, which in my view shall determine if it shall still be relevant to proceed with other grounds. In disposing this issue, I had to take the trouble to read the District court record, particularly the hand written proceedings. The proceedings reveal that on 15th January 2020, the court issued orders, among others, service of summons to the parties. The matter was also scheduled for mention on 23rd January 2020. On 23rd January 2020, both parties appeared and the Hon. Magistrate informed the parties that the applicant (the respondent herein) has requested for the court to revise the decision of the primary court. The Hon. Magistrate then proceeded to fix a date for ruling to 07th February 2020 and ordered



Court: Judgment delivered in Mbeya in Chambers on this 03rd day of September 2020 in the presence of both parties.



L. M. MONGELLA

JUDGE