

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 379 OF 2019

*(Arising from Matrimonial Cause No. 27 of 2015 and Misc. Civil Application
No. 77 of 2018 before Honourable Massabo)*

IRENEI BONIFACE KIRIA.....APPLICANT

VERSUS

JACQUILINE SAMSON MATORO.....RESPONDENT

RULING

Date of last Order: 15/12/2020

Date of Ruling: 22/12/2020

MLYAMBINA, J.

The Applicant Irenei Boniface Kiria and the Respondent Jacqueline Samson Matoro contracted Civil marriage on 18th day of April, 2000. Prior their marriage, the two cohabited in Dar es Salaam for over a year. In their marriage the beloved couple were blessed with two issues namely; Lulu Sophia Irenei Kiria born on 8th September, 1999 and Rubi Irenei Kiria born on 8th November, 2007.

In the year 2015, the Respondent herein petitioned for divorce Decree, custody of the child and division of the joint matrimonial properties via *Matrimonial Cause No. 27 of 2015* before the Kisutu

Resident Magistrates Court. Upon hearing both parties, the Court Decreed as follows:

1. Marriage between the parties is dissolved.
2. The custody of the child be placed to the Respondent (Applicant herein).
3. Plot No. 520 Block "A" Mjimwema Kigamboni is allocated to the Petitioner and Plot No. 521 Block 'A' Mjimwema Kigamboni is allocated to the Respondent.

Consequently, the Applicant lodged the instant chamber summons made under *Section 79 (1) of the Civil Procedure Code Cap 33 (R.E 2002)* seeking for revision on the grounds:

- a) That, the Honourable Resident Magistrate erred in law and fact by failing to appreciate the error on the face of the record in the decision in *Matrimonial Cause No. 27 of 2015*, that the house the parties were living in does not belong to them and thus not subject to division of matrimonial properties.
- b) That, the Honourable Resident Magistrate erred in law and in fact by holding that it was correct for the trial Magistrate to hold that Plot No. 520 and 521 Block "A" Mjimwema Kigamboni were matrimonial properties contrary to the

Petitioners (Respondent herein) pleadings and evidence on record.

The application has been supported with the affidavit of Edward Peter Chuwa, an Advocate of the Applicant. It essentially points the herein above two grounds for revision.

It is very unfortunate, on 11th November, 2020 when the application was called for hearing, the Respondent had these to tell the Court:

My lord, I'm not contesting this application and I have written a letter to that effect. I don't want any psychological torture anymore. But the properties were acquired during marriage life.

On her party, Counsel Happy Daniel for the Applicant prayed the application be granted because it was not contested.

I reserved the ruling so that I could get time to go through the entire impugned records. I have noted, however, the Applicant herein had advanced the argument that the house belonged to his brother but the Court refrained from entertaining that issue for want of jurisdiction on land matters. Page 11 of the Judgement clearly states:

In that upshot, this Court find the parties should first iron out over the ownership of the house at the competent forum.

There was, however, an admission by the Applicant herein to have jointly acquired Plot No. 520 and 521 Block "A" Mjimwema. In so doing, I find the trial Court was justified in reaching to its decision. The fact that the Respondent told the Court that the two properties were jointly acquired and there is nothing in record to prove to the contrary, I find there is no legal justification for this Court to grant the revision sought. Court of law has to decide basing on legal principles and available evidences. It cannot decide basing on mercy, fear or favour.

In the upshot, the application is dismissed for lack of merits. For interests of justice, I order costs be shared.




Y. J. MLYAMBINA
JUDGE
22/12/20209

Ruling delivered and dated 22nd December, 2020 in the absence of the Applicant and in the presence of the Respondent in person.



Y. J. MLYAMBINA

JUDGE

22/12/2020

A handwritten signature in blue ink, written over the printed name and title of the judge.