

IN THE HIGH COURT OF TANZANIA

(DODOMA DISTRICT REGISTRY)

AT DODOMA

MISC CIVIL APPLICATION NO. 1 OF 2020

(Arising from matrimonial Appeal No. 3 of 2017 at Kondoa District Court, Matrimonial Cause No. 22 of 2012 at Kondoa primary Court, Matrimonial Appeal No. 4 of 2014 at Kondoa District Court, PC Matrimonial Appeal No. 3 of 2014 at High Court of Tanzania at Dodoma and Consolidated PC Matrimonial Appeal No. 1 and 2 of 2018)

PHARES ISSAYA MUSHI APPLICANT

VERSUS

HAPPINESS PETER MURORESPONDENT

11/12/2020 & 16/12/2020

RULING

MASAJU, J

The Applicant, Phares Isaya Mushi, vide his chamber Summons Application made under section 5 (2) (c) of the Appellant jurisdiction Act, [Cap 141] seeks the certificate of the Court that there is a point of law to be consired by the Court of Appeal of the United Republic of Tanzania in his intended appeal thereto. The Application is supported by the Affidavit

sworn by his learned counsel, Mr. Malimi Juma. The said Affidavit gives the background and the reasons for the Application in paragraphs 2 – 7 thereof.

The Respondent, Happiness Peter Muro, contests the Application and there is her own Counter Affidavit to that effect particularly in paragraphs 4, 5, 6 of the Counter Affidavit.

The Applicant's Affidavit in paragraphs 5 and 6 read thus:

"5. That, the decision of Honourable Court failed to appreciate provisions of the Law of Marriage Act when considering distribution of matrimonial properties.

6. That, the honourable Court erred in law to the said extent and thus the distribution was wrongly decided upon."

Against the said averments by the Applicant, the Respondent's Counter Affidavit reads in paragraphs 4 and 5 thus;

"4. That, the content of paragraph 5 of the Applicant's affidavit is disputed and the Respondent states further that the High Court did judiciously consider the provisions of section 114 of the Law

of Marriage Act, Cap 29 R.E 2019 when it ordered division of matrimonial properties between the parties herein.

5. That the content of paragraph of the Applicant's affidavit is disputed and the Respondent asserts that what is stated does not suffice to be a point of Law to be certified by this Honourable Court."

When the Application was heard in the Court on the 25th day of November, 2020, the learned counsel, Mr. Malimi Juma appeared for the Applicant whilst the learned counsel Ms. Neema Ahmed appeared for the Respondent. The parties, *inter alia*, adopted their pleadings in the Affidavit and Court Affidavit respectively to form part of their submissions for, and against the Application accordingly. The parties argued the Application alongside the pleadings. The Applicant prayed the Court to grant the Application whilst the Respondent prayed the Court to dismiss the Application for want of merit. That is all by the parties.

The Court is of the considered position that this Court (Mlacha, J) as per the copy judgment annexed to the Affidavit in support of the Chambers Summons Application seriously and diligently considered and invoked

section 114 of the Law of Marriage Act, [cap 29] on the distribution of matrimonial properties between the former spouses, the parties herein. The Court also considered and invoked **Bi Hawa Mohamed V. Ali Sefu [1980] TLR 32** as guidance on the Principles of division of matrimonial properties upon dissolution of marriage. There is therefore no point of law involved in the intended appeal as so rightly averred by the Respondent in her 5th paragraph of the Counter Affidavit and her learned counsel, Ms. Neema Ahmed during the hearing of the Application before the Court.

The Applicant's submission before the Court revolves around factual matters, not matters of law, which matters were diligently and reasonably considered by the Court in PC Matrimonial Appeal No. 2 of 2018 (Mlacha, J).

That said, the Application which is devoid of merit for want of point of law for certification by the Court is hereby dismissed accordingly. The parties shall bear their own costs accordingly.



GEORGE M. MASAJU

JUDGE

16/12/2020