

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

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 245 OF 2019

(Arising from the judgment of this court in pc civil appeal no. 90 of 2017)

SAMWEL NG'INGO.....APPLICANT

VERSUS

EGRA SAMWEL NG'INGO.....RESPONDENT

RULING

MASABO, J.

The applicant herein being dissatisfied with the decision of this Court in PC CIVIL Appeal No. 90 of 2017 seeks certification that the said decision contains a point of law which he would like to have it resolved by the Court of Appeal. In a nutshell, the application has its origin in a matrimonial cause in primary court of Morogoro through which the marriage between the parties herein was dissolved and subsequent orders for division of matrimonial assets jointly acquired by the parties during the subsistence of their marriage, among which was a house No. 223 situated at Block V at Kenyatta street, sabasaba area in Morogoro which was distributed at the ratio of 70% to the Appellant and 30% and a house at Nanenane area. The Applicant herein was not contented with the division; he did not challenge the same on appeal.

The Respondent was unhappy. She challenged the division in the District court of Morogoro which found in her favour. The two houses were distributed on equal halves whereby the Respondent was awarded the house at Sabasaba area and the one at Nanenane area was awarded to the Applicant. After this decision, the Applicant woke up. He appealed to this Court. In his first ground of appeal he challenged the first appeal court for affirming the distribution of house situated at Sabasaba area in that it was done in total disregard of the fact that he acquired the same through his singular efforts. Upon full hearing of the appeal this court found no reason to interfere with the decision of the 1st appeal court and confirmed the same. The Applicant is unhappy. He is desirous of appealing to the Court of Appeal. He contends that, there is a point of law to determine by the court of appeal, to wit: this Court erred in confirming the distribution of the house situated at Sabasaba area as it belonged to one Abdallah Alli Ng'ingo who was not party to the suit

During hearing the Applicant appeared unrepresented whereas the Respondent was represented by Mr. Elipid Tarimo learned counsel. In his brief address to the court the Applicant submitted that the point worth certification of this courts rests on the fact that the High Court erred in confirming the division of the house located at Sabasaba area because the same was never a matrimonial home but a property of one Abdallah Alli Ng'ingo who was not party to the suit. On his part Mr. Tarimo, learned counsel submitted that, there was nothing to fault the decision of the High Court and as well at the decision of the first appeal court because at no point during trial and even during appeal the Applicant contended that the

disputed house belonged to the said Abdallah Alli Ng'ingo. He submitted further that the courts directed themselves correctly on section 114 of the Law of Marriage Act, 1971 which is the the law guiding the distribution of matrimonial assets and all the necessary authorities including the decision of the case of **Bi Hawa Mohamed v Ali Seif** [1993] TLR 32.

I have considered the submission by both parties. It is a settled principle of law that appeals originating from primary courts are governed by section 5(2)(c) which require the part to obtain a certification on the point of law. Certification is aimed to ensure that all cases originating from primary courts end within the High Court except where there is a novel point or where there are matters of "legal significance and public importance" (see **Ali Vuai Ali v Suwedi Mzee Suwedi** [2004] TLR 110, **Eustace Kubalyenda vs Venancia Daud** Civil Appeal No 70 of 2011). Under the law, a novel point of law is said to exist where:

".....the issue raised is unprecedented, where the point sought to be certified has not been pronounced by this Court before and is significant or goes to the root of the decision, where the issue at stake involves jurisdiction, where the court(s) below misinterpreted the law etc." (See **Mohamed Mohamed & Khamis Mselem v Omar Khatib**, Civil Appeal No. 68 of 2011, Court of Appeal of Tanzania at Zanzibar (unreported). Also see **Elly Peter Sanya v Ester Nelson**, Civil Application No. 3 of 2015, Court of Appeal of Tanzania at Mbeya (unreported).

Based on this principle, the question that follows is whether or not the points raised by the applicant are worthy of certification or put otherwise, do the

points raised by the Applicant constitute a novel point? With respect, none of these questions attract an affirmative answer. As correctly submitted by Mr. Tarimo, it is on record that the trial court as well as the two appeal courts correctly addressed themselves to the law regulating matters pertaining to division of matrimonial assets and in particular, the provision of section 114 (2) and (3) of the Law of the Marriage Act, 1971.

Besides, as correctly argued by Mr. Tarimo, the point raised by the Applicant is a new point as was never in issue during trial and even during the two appeals. As I have alluded to earlier, the disputed house was part of the distribution orders made by the trial court to which the Applicant herein was satisfied with. In the first and 2nd appeal, this issue was raised. In fact, to add salt to injury, the point raised constitutes a direct contradiction with the Applicant's own pleadings in PC Civil Appeal No. 90 of 2017. As it could be seen from the judgment of this court which is appended to this application, the first two grounds of appeal raised by the Applicant in PC Civil Appeal No. 90 of 2017 were as follows:

1. The first appellate court erred in law and on facts when it held the view that the Respondent herein was entitled to the house at Sabasaba without due regard to the fact that the said house was acquired solely by myself and in my original name of Ally Ng'ingo which name I changed in 2006 following my change of religion so that I could marry the Respondent who was a Christian and was not ready to change her religion.


2. The appeal court erred in law and on facts when it held the view that in 2004 when I acquired the house at Sabasaba we were already husband and wife, and therefore the Respondent was entitled the said house" [emphasis added]

The wording of these two grounds are older and clear on the issue of ownership and direct contradict the Applicants assertion that the house in question belongs to another person. In my strong view, the application is not only without merit but the Applicant has demonstrated a blatant abuse of the court procedures.

Under the premise, I dismiss the Application. Parties are to bear their respective costs.

DATED at DAR ES SALAAM this 26th day of May 2020.




J.L. MASABO
JUDGE