

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF KIGOMA

AT KIGOMA

APPELLATE JURISDICTION

(PC) MISC. CIVIL APPLICATION NO. 16 OF 2020

(Arising from Matrimonial Appeal No. 3 of the High Court of Tanzania at Kigoma
Before: Hon. I.C. Mugeta, J. Matrimonial Appeal No. 1 of 2018 of the District Court
of Kigoma Before: Hon. K. Mutembei, 6RM and originating from Matrimonial Cause
No. 65 of 2017 of Ujiji Primary Court Before: Hon. Y. Busungu – PPCM)

MOSHI MASHARUBU.....APPLICANT

VERSUS

OLIVA TASHA MAHALA (As Administratrix of the

estate of the late HAPPINESS D/O TASHA

MAHALA).....**RESPONDENT**

RULING

16th Feb.2021 & 16th Feb.2021

A. MATUMA, J

The applicant is seeking certification on point of law so that he can appeal to the Court of Appeal against the decision of this Court in PC Matrimonial Appeal Case No. 3 of 2020.

Several grounds for the sought certification have been advanced including whether this Court properly adjudged that there was a presumed Marriage

between the applicant and the late Happiness d/o Tasha (Respondent). That such determination brought about all the problems in the instant matter.

Having heard the parties for and against this application, I am satisfied that there is a point of law involved in the decision, and I certify the following points of law to be determined by the Court of appeal;

- i. Whether in law the applicant and the late Happiness Tasha qualified to be presumed as a husband and wife under the presumption of marriage.
- ii. Whether legally the properties ordered to be distributed between the parties were sufficiently proved and or established its existence.
- iii. Whether in the circumstances of this case the applicable provisions for distribution of properties was section 160 (2) or 114 of the Law of Marriage Act.

In addition to those issues, I have observed that the custody of children requires to be worked upon after the death of their mother who was entrusted custody.

In my view the Applicant can file a fresh application to that effect or any other interested person.

In the instant matter, the respondent is assuming custody merely because she is administrator of the estate of the deceased.

I don't think issues of Marriage can be regarded as part of the estate of the deceased to be administered by the administratrix. In its absolute discretion the Court of Appeal may thus determine in addition to the certified issues;

Whether an administrator of the estate of the deceased who had custody of children has an automatic right of custody.

Having said all these, this application is hereby granted as sought and no orders as to costs.

It is so ordered.



A. Matuma

Judge

16/2/2021

Court: Ruling delivered this 16th day of February, 2021 in the presence of Applicant and represented by learned advocate Kabuguzi and the Respondent in person.

Sgd: A. Matuma

Judge

16/2/2021