

IN THE HIGH COURT OF TANZANIA

MWANZA DISTRICT REGISTRY

AT MWANZA

MISC CIVIL APPLICATION NO. 138 OF 2020

(Original (PC) Matrimonial case No. 9/2019)

SALUM OMARY NDEGEAPPLICANT

VERSUS

NYAMIJI MISALABA MUBEBA.....RESPONDENT

EXPARTE RULING

08 & 13/04/2021

RUMANYIKA, J.:

Brought under Section 5 (2) (c) of the Appellate Jurisdiction. Act Cap 141 RE. 2019 the application is, with respect to judgment and decree dated 7/9/2020 for certification on point of law. It is supported by affidavit of Salum Omary Ndege (the applicant) whose contents essentially he adopted during the hearing.

When the matter was, by way of audio conferencing called on 8/4/2021 for hearing, only the appellant was present online (mobile

number 0788089318). Nyamiji Misalaba Mubeba (the respondent) was not traced therefore not served. Having considered the nature and substance of it, apparently the matter not tenable, I dispensed with the latter's appearance hence the exparte ruling.

Having intimated his intention on his own to proceed because the lawyer had been engaged only for drawing, unusually briefly, the applicant simply urged the court to look at the contents of the supporting affidavit and determine it appropriately. That is all.

I had sufficient time to look at the contents of the supporting affidavit which ones in a nutshell it reads thus; that having had lost the 2nd appeal on 7/9/2020 and he lodged a notice of appeal immediately, rephrased the three (3) points of law now sought to be certified were; **(i)** whether sufficed the respondent's assertions to prove joint efforts to acquisition of the matrimonial property at issue. **(ii)** Whether inherited was matrimonial property **(iii)** whether a 2nd wife was entitled to share of property jointly acquired by the other wife.

The bottom line and pivotal issue is whether the three raised purely involved points of law. The answer is no. In fact if were to be rounded up,

the three points would read; **when was matrimonial property matrimonial?** The point may be factual or both factual and law but the fact remains that the fact is worth the name not a point for certification. It follows therefore that the application lacks merits. It is dismissed. Now that the respondent hadn't filed a counter affidavit or even once appeared, each party shall bear their costs. It is ordered accordingly.

S. M. RUMANYIKA

JUDGE

09/04/2021

The ruling is delivered under my hand and seal of the court in chambers this 13/4/2021 in the absence of the parties.



S. M. RUMANYIKA

JUDGE

13/04/2021