

**IN THE HIGH COURT OF TANZANIA**

**AT MWANZA**

**MISC CIVIL APPLICATION NO. 27 OF 2021**

(Arising from HC Civil Revision No. 62/2021 dated 26<sup>th</sup> February, 202.

Originating from decision in DC Probate Appeal No. 10 of 2020 at Nyamagana  
District Court)

**ZAINABU JUMA MASOUD**

*(Administratrix of the Estate of the late Hashim Jawadu Zubail) ....* **APPLICANT**

**VERSUS**

**AMINA JOSEPHAT MUGANDA ..... RESPONDENT**

**RULING**

*17 & 31/05/2021*

**RUMANYIKA, J**

With respect to decision of this court, according to records handed down on 26.02.2020 the application for certification of five (5) points of law is brought under S. 5 (2) (c) of the Appellate Jurisdiction Act Cap 141 (the Act) and Rule 45 (a) of the Court of Appeal Rules, 2009 (the Rules). It is supported by affidavit of Zainabu Juma Masoud whose contents essentially Mr. S. Kitare learned counsel for Zainabu Juma Masoud (the

applicant) adopted on 12.05.2021 during audio teleconference hearing. Mr. Galyatano learned counsel appeared for Amina Josephat Muganda (the respondent). For avoidance of doubts I heard them through their mobile numbers 0757 422 256 and 0714 436 766 respectively.

If I were to rephrase it, and I think without missing its concept and context, in a more condensed form the five points now sought to be certified for determination by the highest fountain of justice could boil down to 4 and read thus:- (i) Whether in favor of the respondent this court had powers to grant a relief not sought (ii) Whether instead of an appeal this court improperly entertained revision proceedings (case of **NBC & Another v. Bruno Vitus Swallo**, Civil Appeal No. 331 of 2019 (CA) unreported (iii) Whether the court was justified but completely ignorant of Islamic law to award the applicant part of the estate the house (iv) Whether the applicant's claim for the burial expenses was not proved or accepted by the respondent.

On his part, but unusually briefly, Mr. Galyatano learned counsel he submitted and urged the court to just determine the application as it deemed just. That is it.



The central issue, and it is trite law is whether within the ambits and context of the provisions of S. 5 (2) (c ) of the Act, now sought to be certified as opposed to fact the four were worth the name points of law by way of appeal determinable by the Court of Appeal of Tanzania.

At times, and, more so in this case what constituted points of fact and law may have been separated just by a thin if not an invisible thin thread, but, in the present case for instance whether or not the respondent had sought for relief (s) that the court granted her it was more factual other than law much as with greatest respect Mr. S. Kitare learned counsel did not tell, of course subject to court's discretion if the relief at issue did not fall under category of the commonly pleaded **any other and alternative reliefs that the court deemed fit, just and equitable to grant !** Point number 3 suffers a natural death.

Last but not least I am also aware of the long settled legal principle that unless the process was, by law or otherwise blocked by the court order, a revision or appeal was no alternative of each other yes, but Mr. S. Kitare did not tell the court if doing otherwise the parties were prejudiced much as for the 1<sup>st</sup> time the point cropped up here not in the trial primary court. If anything therefore, on this one the applicant may have had just appealed as of right.

Moreover whether or not with respect to the respective burial expenses the applicant had proved the claims the point was factual (not a point of law) under the provisions of the Act worth certification by this court.

It is in my considered opinion therefore that it is very unfortunate the points were presented for certification. The devoid of merits application is dismissed with costs. It is so ordered.

  
**S. M. Rumanyika**

**JUDGE**

**27.05.2021**

The ruling is delivered under my hand and seal of the court in chambers this 31.05.2021 in the absence of the parties.



  
**S. M. Rumanyika**

**JUDGE**

**31.05.2021**