

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF ARUSHA)**

AT ARUSHA

CIVIL APPEAL NO. 22 OF 2021

(Appeal from original Matrimonial Cause No. 1 of 2020, Simanjiro District Court at Orkesumet the Judgment of O.I NICODEMO – RM dated 19th April, 2021)

GEORGE ELIAS.....APPELLANT

VERSUS

ROSE GEORGE.....RESPONDENT

RULING

16/09/2021 & 19/10/2021

GWAE,

In this civil appeal, I am legally required to determine on whether the appellant's appeal is competent or not. The issue of competence or otherwise of this appeal was observed by the court suo moto.

Seemingly, the appellant was aggrieved by the decision of the Simanjiro District Court at Orkesumet dated 19th April 2021 dismissing his oral prayer, that he should be given an access to the business currently manned by the respondent on the reason that the respondent might squander or alternatively the business be closed pending determination of the respondent's petition for

divorce, division of matrimonial assets and maintenance of the parties' son one Kelvin George. The trial court in its ruling ordered as follows;

"...taking into consideration to the conflict appears to exist between the two parties and for that matter, I find it is not safe for the respondent to visit the petitioner. The prayer that this court to order the petitioner to stop the business, it is in my view that this prayer is devoid of merit, the issue of joint properties is entirely disputed and on the other hand there is no proof that the petitioner will squander the business and properties. It follows therefore the prayers has (sic) no merit and the same are dismissed."

When parties were availed an opportunity to address the court on the competence of the appeal before taking any judicial step as to my observation.

The appellant's advocate one Mr. **Mwiru Amani** argued that, this appeal is legally competent by virtue of section 43 of the Magistrate's Courts' Act, Cap 11 Revised Edition, 2019 (hereinafter to be referred as "the Act"). He added that, the order as to separation of the parties and order handing over the matrimonial properties to the respondent/petitioner denote a finality of the case.

The respondent, on the other hand, focusedly argued that this appeal is pre-mature as the order of the trial court does not hand over matrimonial assets

to her permanent. She consequently sought the matter between them be remitted to the trial court so that the same can be heard and determined by trial court on its finality.

In his order, Mr. Amani stated that the trial court's order handing over the assets tot; a house, plots and shop constitutes a finality of the case.

Looking to the nature of the appellant's prayers and order made by the trial court, It would perhaps be appropriate if provisions of subsection (2) of section 43 of the (supra) is reproduced herein under for sake of clarity;

(2) Subject to provisions of subsection (3) no appeals or applications for revisions shall be against or be made in respect of any preliminary or interlocutory decisions or orders of the district court or a court of resident magistrate unless such decision or order has the effect of finally determining the criminal charge or suit


See also section 97 (2) of the Civil Procedure Code Cap 33 Revised Edition, 2019 which is *mutatis mutandis* with the above quoted provision.

According to the above cited provision of the law, I am of the considered that, there are no appeals or applications for revision emanating from either District Court or Resident Magistrate's Court on temporary decisions or orders or

Basing on the fact that, the orders of the trial court did not finally determine the petition, this appeal is thus found to have prematurely been preferred by the appellant as nothing like conclusive or final orders or decisions in respect of the petition filed by the respondent that were made by the trial court, be it in the division of matrimonial assets or business or maintenance of the parties' issue, Kelvin George.

Consequently, this appeal is found to be incompetent. The same is struck out for being prematurely filed. For interest of justice for both parties and mindful of the urgency of the matter between the parties, I hereby order that, the petition be expeditiously heard and determined by the trial court. As the issue of ineffectiveness of the appeal was raised by the court suo motto, each party shall bear his or her costs.




M. R. GWAE
JUDGE
10/10/2021