IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF DODOMA

AT DODOMA

PC CIVIL APPEAL NO. 6 OF 2020

(From the decision of the District Court of Dodoma, Civil Appeal No. 25/2019, originating from Chamwino Primary Court Matrimonial Cause No.21 of 2016)

HUSSEIN IDDY .....APPELLANT

VERSUS

AMINA IBRAHIM .....RESPONDENT

JUDGMENT

Date of last Order: 14/09/2021

Date of Judgment: 08/12/2021

A.J. Mambi, J.

The appellant and respondent had once enjoyed their spouse relationship as married couple before their relationship broke. Earlier the respondent filled an application for divorce at the Primary court on 28/07/16. The primary court noted that the circumstances revealed that the marriage between the parties had irreparably broken down. Having determined the matter, the primary court consequently, blessed the divorce and ordered the

division of matrimonial properties. While the respondent was on the process of execution, the appellant appealed to the District Court. However, while the matter was in the final stage of Judgment at the District Court the appellant prayed to withdraw his appeal and agreed the execution at the primary court to proceed. The appellant informed the court that he has no interest to proceed with his appeal. The records reveal that the parties went back to the Primary court for execution. However, in the course of execution, the appellant objected and rushed to file new appeal at the District Court. The District Court dismissed the appeal on the ground that the court was functus official.

Aggrieved, the appellant has now appealed to this court against the decision of the District Court basing on four grounds of appeal as follows.

1. That, the Trial Court erred in law and fact when delivering a judgment in favour of the Respondent by Ordering the divorce while the parties did not go through reconciliation board.
2. That, the Trial Court erred in law and facts for holding that the matter was already entertained by the same court while the matter was not entertained to its finality.
3. That, the Trial Court erred in law and fact by issuing a divorce basing on weak and contradictory evidence adduced by the Respondent herein.

4. That, the trial court erred in law and fact for being bias against the appellant, the matter which injustice in his decision of Matrimonial Case No. 21 of 2016.

During hearing both parties, appeared unrepresented. All parties prayed to adopt their documents that is the petition of appeal for the appellant and reply by the respondent.

I have carefully gone through the submissions from both parties including the records such as proceedings, judgment and other records from the lower courts. Before going though all grounds of appeal, I wish to first address one issue as to whether the hands of the District court were tied up to determine the second appeal by the appellant or not. This issue emanates from ground number four of an appeal filed by the appellant. In other words the issue is whether it was proper for the appellant to file his second appeal while they agreed the matter to be withdrawn and proceed with the execution at the trial primary court. In my view if the appellant had intention to appeal again after withdrawal of his appeal, he ought to pray for leave to re-file his appeal. Failure to pray for leave to re-file his appeal implied that he had no intention to appeal again and that is why he entered into an agreement with the respondent to withdraw his appeal and resume back to the Primary Court for execution. I entirely agreed with the trial court that it was bound by the principal of fanctus official and thus it had no power to re-entertain the second appeal.

The rationale vale behind principles of funtus official the same court cannot entertain similar matter that had reached into finality. It goes without saying that a party who has once succeeded on an issue should not be harassed by multiplicity of proceedings involving the same issue. Reference can also be made to the persuasive authority in ***Lal Chand v. Radha Krishan, (1977)2 SCC 88: AIR 1977 SC 789.*** The rule of conclusiveness operates as a bar to try the same issue between the same parties once again by avoiding vexatious litigation. This means that the District Courts had no mandate to determine the same matter that was already been withdrawn with no leave to refile. It is trite law, that litigation should come to an end otherwise indefinite litigation will end up with abuse of court process and misuse of justice. This court has the role of controlling unnecessary litigation that is likely to unnecessary take long time to avoid denying parties any right granted by the court. I have considerably gone through the records from both the District Court and the Primary Court and found that the matter that involved the save parties and same issues was withdrawn at the District Court. Indeed the appellant at the District Court in his second ground of appeal appears to have **admitted that he once filed Appeal No. 22 of 2016**. This means **Appeal No. 25 of 2019** was the second appeal at the District Court after Appeal No. 22 of 2016 was withdrawn with no leave to re-file. It is also on the records (page 3 of the **Ruling dated 06/02/2017) that** before the District Court made **judgment parties at the court** voluntarily agreed to withdraw **the matter and the matter**

was remitted to the Primary Court for execution. This means that the District Court was barred by the Principal of functus official as the appellant and the respondent agreed that matter be withdrawn and they opted for execution at the Primary Court.

In my considered view there was no valid appeal at the District Court since the same court had already entertained the same matter. In this regard since there was no valid appeal at the District Court, there is no proper appeal in this court. Consequently, since the appellant did not comply with the mandatory requirements of the law, it is as good as saying there is no appeal at this court

Reference can be made to the decision of the court in ***Joseph Ntongwisangue another V. Principal Secretary Ministry of finance & another Civil Reference No.10 of 2005*** (unreported) where it was held that:

> *"In situation where the application proceeds to a hearing on merit and in such hearing the application is found to be not only incompetent but also lacking in merit, it must be dismissed. The rationale is simple. Experience shows that the litigations if not controlled by the court, may unnecessarily take a very long period and deny a party in the litigation enjoyment of rights granted by the court.*

Reference can also be made to the decision of the court of Appeal of Tanzania in *The Director of Public Prosecutions v. ACP Abdalla Zombe and 8 others* Criminal Appeal No. 254 of 2009, CAT (unreported) where the court held that:

"this Court always first makes a definite finding on whether or not the matter before it for determination is competently before it. This is simply because this Court and all courts have no jurisdiction, be it statutory or inherent, to entertain and determine any incompetent proceedings."

From the foregoing brief discussion, I am of the settled mind that the purported appeal is incompetent and cannot stand as a valid appeal.

I have no reason to depart from the decision made by the District Court apart from upholding that decision.

In the circumstance and from the reasons stated above I find the appeal before this court unmerited and is accordingly dismissed.

I make no orders as to costs.

Order accordingly.

A. J. MAMBI

JUDGE

08/12/2021

Right of Appeal Explained.

A. J. MAMBI

JUDGE

08/12/2021