

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF  
TANZANIA**

**IN THE DISTRICT COURT OF ARUSHA**

**AT ARUSHA**

**MATRIMONIAL APPEAL NO. 2 OF 2020**

(Originating from PC Matrimonial Cause No. 11 of 2020)

**JENI MUSHI.....APPELLANT**

**VERSUS**

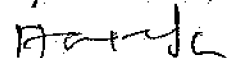
**HILLARY KIMARO..... RESPONDENT**

**JUDGMENT**

09.05.2022 & 16.06.2022

**N.R. MWASEBA, J.**

Before the Primary Court of Mto wa Mbu at Monduli District in Arusha Region, the Respondent Hilary Kimaro petitioned for divorce against the Appellant Jeni Mushi. The trial primary court in its decision dated 13/10/2020 issued a decree of divorce and granted the custody of a child Janeth, to the appellant herein as she was still young (2 ½ years) and for Joan to continue living with her grandparent until she completes standard seven, and thereafter she would start living with the respondent herein and ordered the respondent to pay maintenance



costs of Tshs. 150,000/= per month. The respondent was further ordered to pay for school fees, clothing and treatment costs. As for the matrimonial properties the court ordered the appellant and respondent to receive 40% and 60 % respectively.

Being aggrieved by the said decision, the appellant appealed direct from primary court to this court armed with five grounds of appeal as follows:

- i) That, the trial court erred in fact and law in that it held that the marriage between the parties herein were broken down irrepealably in absence of evidence in court record to that effect.*
- ii) That, the trial court erred in fat and in law in that it ordered division of matrimonial properties without considering the guiding principles governing division of matrimonial properties.*
- iii) That, the trial court erred in fact and law in that it ordered payment of Tshs. 150,000 as maintenance of the infant children of the parties herein contrary the guiding principles governing maintenance order.*
- iv) That, the trial court erred in fact and law in that it entertained petition for divorce on absence of the mandatory certificate*

*Handwritten signature*

*from Marriage Conciliatory Board to the effect that it has failed to reconcile the parties herein.*

- v) *That, the trial court erred in law and fact in that it failed to consider the guiding principles governing custody of the infant children.*

As a matter of legal representation, the appellant was duly represented by **Mr Arnold A. Tarimo** while the respondent was well represented by **Mr Mohamed N. Muhina**, both learned counsels. The counsel for the parties opted to argue the appeal by way of written submissions and they both complied with the submissions schedule.

Before going to the merit of the appeal this court noted that this was an appeal against the decision of a primary court. As a matter of law an appeal from the primary court cannot be filed direct to this court (High Court). It could have started from the district court and upon lack of satisfaction, they could knock the door of this court. However, this court noted that the appellant might have been misled by the provision of **Section 80 (1) of the Law of Marriage Act** [Cap 29 R.E 2019] which provides:

*"Any person aggrieved by any decision on order of a court of a resident magistrate, a district court or a primary court in a*

*High Court*

*matrimonial proceeding may appeal therefrom to the High Court."*

The above provision is misleading due to the fact that it was already amended by the **Written Laws (Miscellaneous Amendments) Act**, No 15 of 1980. Unfortunately, the Revised Editions of the Laws of Marriage Act 2002 and 2019 did not incorporate the said amendments. In both Revised Editions the provision remains with the contents of the original version of the Law of Marriage Act, No 1 of 1971. However, the said Act No 15 of 1980 amended Section 80 by deleting subsections (1) and (2) and substituting for them the following subsections:

*"(1) Any person aggrieved by any decision or order of a Primary Court, or by any decision or order of a District Court, may appeal from that court, respectively, to the district court or the High court.*

*(2) An appeal to the District Court or to the High Court shall be filed, respectively, in the Primary Court or in the District Court within forty-five days of the decision or order against which the appeal is brought."*

Thus, the above provision clearly stipulates that an appeal in matrimonial proceedings from the Primary Court is channeled to the

District Court and not to the High Court. This is due to the fact that, Act No 15 of 1980 has neither been repealed nor Section 80 (1) of the Law of Marriage Act was amended thereafter. The error of not incorporating such amendments in the 2002 and 2019 Revised Editions does not make the provision inapplicable. This position has been stated by this court in several cases such as the case of **Sakina Hussein Mwasa V. Sadick Mfaume**, Misc. Civil Application No. 234 of 2020, HC Dar es Salaam District Registry, **Omary Hamisi Faraji V. Wahida Elieshi Kyerulomi**, PC Civil Appeal No 4 of 2022, HC Temeke Sub-registry. From the foregone reasons, it is my finding that this appeal is incompetently filed before this court.

Taking into consideration that the appellant has been misled by the error in publication of the laws particularly of not incorporating the amendments of **Section 80 of the Law of Marriage Act** in the Revised Editions of 2002 and 2019, I find that the parties cannot be punished on that basis. Since the time for appeal to the district court as specified under **Section 80 (2) of Act** No 15 of 1980 has already lapsed, I extend time for appeal to the district court for the period of 45 days for any party who is aggrieved by the decision of the Primary court.

*Handwritten signature*

In the upshot, the appeal before me is incompetent and thus I dismiss it and direct the aggrieved party to institute his or her appeal to a proper forum within 45 days from the day of this judgment.

It is so ordered.

**DATED** at **ARUSHA** this 16<sup>th</sup> day of June 2022.



**N.R. MWASEBA**

**JUDGE**

**16.06.2022**

