

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MUSOMA
AT MUSOMA**

Misc. CIVIL APPLICATION No. 9 OF 2022

*(Arising from the District Court of Musoma at Musoma in
Matrimonial Appeal No. 3 of 2021)*

AGNES EZEKIEL APPLICANT

Versus

PAULO MAGOTI KAJANA RESPONDENT

RULING

15.06.2022 & 15.06.2022 Mtulya, J.:

An application was lodged in this court registered in **Misc. Civil Application No. 9 of 2022** on 24th March 2022. On 1st June 2022, both parties were present enjoying legal representation of Mr. Ostack Mligo and Mr. Emmanuel Werema, learned counsels. On that day the parties and their learned counsel believed that there is a possibility to settle the parties' differences on the matter and prayed for two (2) weeks leave to end the dispute. The present application was filed in favour of enlargement of time within which the applicant can lodge an appeal in this court out of statutory time to dispute the decision of a **District Court of Musoma at Musoma** (the district court) in **Matrimonial Appeal No. 3 of 2021** (the appeal).

However, before the settlement could be reached at its finality between the parties, Mr. Werema for the respondent had already

filed a reply to the application and attached two (2) points of law challenging the competence of the application. Today morning the application was scheduled for hearing the points or settlement recording. Ms. Maula Tweve, learned counsel, who appeared for the applicant, was the first to set the ball rolling and readily conceded the points and submitted that the points have merit and the application may be struck out for want of competence. However, Ms Tweve prayed before this court that the struck out order to decline costs as the parties are wife and husband with a family which depends on them and the applicant did not waste time of this court.

The first prayer of this court Ms. Tweve was well captured by Mr. Werema who did not protest the first prayer. However with the second prayer, Mr. Werema resisted, contending that: first, the appellant initiated an application and must be responsible for it; second, the applicant wants to dispute good order of the district court; third, the appellant had engaged and paid for legal services; and finally the appellant had left his activities in attending the defective application filed in this court.

In a brief rejoinder with regard to costs, Ms. Tweve argued that the parties are wife and husband and currently disputing division of matrimonial properties, which the same claimed costs

will be extracted. In her opinion, costs concerns the family and not individual persons in the same family hence it will injure the family once ordered.

On my part, I perused the record and noted the two (2) points of objection filed by Mr. Werema. The points show complaints on: first, paragraphs 6, 7 and 12 of the applicant's affidavit contains arguments and narrations contrary to the law regulating affidavits; and second, the applicants' affidavit contains defective verification clause.

I have glanced the applicant's affidavit in paragraph 6, 7 and 12 and verification clause and found them to have vivid faults which render the affidavit to be pronounced as defective affidavit, as I hereby do. The appropriate remedies in such circumstances is to strike out the defective affidavit which will move with the application. It is fortunate that Ms. Tweve was well aware of the faults and conceded in this court that the points raised by Mr. Werema have merit.

However, the learned counsels are at horns contesting on costs, which is the discretion of this court. I am aware that the discretion must be exercised judiciously, but in the circumstances where a dispute is matrimonial and originated from the same family of wife, husband and children, I see no any reason to do so. In

any case, I pronounced the struck out order which may invite the parties again in this court, if any of them is so wish to do so.

Ordered accordingly.



F. H. Mtulya

Judge

15.06.2022

This Ruling was delivered in chambers under the seal of this court in the presence of the parties Ms. Agnes Ezekiel and Mr. Paul Magoti Kajana, and in the presence of their learned minds, Mr. Emmanuel Werema and Ms. Maula Tweve.

F. H. Mtulya

Judge

15.06.2022