

IN THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

SUMBAWANGA DISTRICT REGISTRY

AT SUMBAWANGA

MISC. CIVIL APPLICATION NO. 19 OF 2021

*(Arising from PC Civil Appeal No. 1 of 2021, High Court of Tanzania at Sumbawanga
Originating from PC Civil Appeal No. 11 of 2020 at Mpanda District Court, Original
Matrimonial Cause No. 5 of 2020 at Urban Primary Court of Mpanda District)*

WENSESLAUS S/O KANYENGELEAPPLICANT

VERSUS

ZANABIA ERENEST.....RESPONDENT

RULING

Date of Last Order:

Date of Ruling: 29/07/2022

NDUNGURU, J

The applicant namely Wenseslaus Kanyengele filed the present application for leave to appeal and certificate of point of law on the following order: -

- i. That this Honourable Court be pleased to certify that points of law are involved in the decision of PC Civil Appeal No. 01 of 2021 between Wenseslaus Kanyengele versus Zanabi erenest so that the application be allowed to appeal.*
- ii. Costs of this application be borne by the respondent.*
- iii. Any other reliefs be granted as the court deems fit and just.*

The respondent namely Zanabi Erenest opposed the application through counter affidavit sworn by himself.

The background of the application is that; the applicant was sued by the respondent at Urban Primary Court of Mpanda in matrimonial dispute cause No. 57 of 2020. Dissatisfied the applicant unsuccessful appealed against the decision of the Urban Primary Court of Mpanda District. The applicant was by that decision and appealed to this court in PC. Civil Appeal No. 1 of 2021. This court dismissed the appeal by the applicant for want of merit. The applicant was aggrieved by the said decision and filed Notice of Appeal on 22nd September, 2021; he filed the present application for leave to appeal and certificate on point of law.

When the matter came for hearing, both the applicant and respondent appeared in persons, unrepresented.

The applicant prayed his grounds of application be adopted, he had nothing to add. While the respondent prayed for the court to adopt his counter affidavit.

The issue for determination is whether this application for certification of point of law and leave to the Court of Appeal has merits.

It is general law that the party who appeal to the Court of Appeal in the matters originated from the Primary Courts must obtain the certificate on point of law and leave to appeal. This is provided under section 5 (2) (c) of the Appellate Jurisdiction Act, Cap 141 RE 2019. The said section provides as follows; I quote:

“No appeal shall lie against any decision or order of the High Court in any proceedings under head (c) of Part III of the Magistrates Courts Act, unless the High Court certifies that a point of law is involved in the decision or order,”

The above provision provides for mandatory procedure for obtaining certificate from the High Court that points of law are involved in the matter for determination of the Court of Appeal and leave to appeal to a party who wishes to appear to the Court of Appeal. The rationale is to ensure that only those matters of legal significance and public importance get attention of the Court as per the case of **Ali Vuai Ali vs Suwedi Mzee Suwedi** [2004] TLR 110.

The leave sought by the applicant is granted where the intended grounds of appeal raise issues of general importance or novel points of law or arguable appeal. Leave cannot be granted where the grounds of appeal are frivolous, vexatious or hypothetical. In the case of

Mohamed Mohamed and Another vs Omar Khatibu, Civil Appeal

No. 68 of 2011, Court of Appeal held that: -

“A point of law worthy being certified for our decision would be, for instance, where there is novel point, where the point sought to be certified has not been pronounced by this Court before and is significant or goes to the root of the decision, where the Court below misinterpreted the law, etc. in this sense a mere error of law will not be a good worthy the certificate.”

In the present application, the applicants have five points of law as they are outlined in his chamber application. The said points of law are that Whether it is proper for the court to entertain dissolution of a presumption of marriage without presentation of the Marriage Conciliation Board Certificate; whether it is proper for the court to order maintenance out of wedlock offspring without subjecting the parties to DNA test; whether it is proper for the court to order division of solo acquired property to the presumed husband and wife yet the property had already been distributed to the offspring; whether it is proper for the court to let a party benefit from his own wrong doing; and whether it is proper for the court to regard a solo acquired property as matrimonial property.

This court rightly determined those purported points of law raised by the applicant. I find that the said points of law did not meet the test provided in the case of **Ali Vuai vs Suwedi Mzee Suwedi, and Mohamed and Mohamed and Another vs Omar Khatibu**, supra.

Therefore, the application has no merit and hereby dismissed with costs. The applicant's points of law are not certified to be points of law worthy to be considered and determined by the Court of Appeal in the intended appeal.

It is so ordered.




D. B. NDUNGURU

JUDGE

29. 07. 2022

Date - 29/7/2022
Coram - Hon. K.M. Saguda – Ag, DR
Applicant - Present
Respondent - Present
B/C - J.J. Kabata

Court: The judgment is delivered before the parties on 29/07/2022.



K.M. Saguda
K.M SAGUDA

Ag, DEPUTY REGISTRAR

29/07/2022