

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(MWANZA SUB- REGISTRY)**

AT MWANZA

MISC. CIVIL APPLICATION NO. 126 OF 2021

(Arising from PC. Matrimonial Appeal No. 13/2021 before Hon. Ismail, J and from the judgment of the District Court of Nyamagana at Mwanza D/C Matr. Appeal No. 27/2020 Before Hon Ryoba – RM)

VERONICA PETRO.....APPLICANT

VERSUS

MOSHI SHABANI.....RESPONDENT

RULING

3rd August, 2022

DYANSOBERA, J.

The parties are ex-spouse. After their matrimonial dispute was determined before the Primary Court of Nyamagana District at Mkuyuni in Matrimonial Cause No. 32 of 2020 and subsequently landed in the District Court on appeal as DC Matrimonial Appeal No. 27 of 2020, the respondent filed his appeal (PC Matrimonial Appeal No. 13 of 21) to this court. After hearing the parties, this court partly allowed the appeal on 9th August, 2021.

The applicant is aggrieved and seeks to go to the Court of Appeal. Before this court, the applicant has made her application under Section 5 (1) (c) of the Appellate Jurisdiction Act [Cap. 141

R.E.2019] seeking leave to appeal to the Court of Appeal, certification on points of law, costs of the suit to be in the main cause and any other reliefs and an affidavit sworn by the applicant has been filed in support of the application.

In resisting the application, the respondent has prefaced his counter affidavit by filing a notice of preliminary objection on the ground that since the application does not require a certificate on point of law, the prayer No. (ii) in the Chamber Application is misconceived.

During the hearing of the preliminary objection, Mr. Stephene Kaijage, learned Counsel for the applicant, conceded to the preliminary objection. He contended that after looking at the preliminary objection and after passing through the relevant law, he has come to the conclusion that though the preliminary objection is on prayer No. (ii) to the Chamber Summons, the said preliminary objection covers also prayer No. (i) in the Chamber Summons.

He prayed that this application be marked as withdrawn so that the applicant proceeds with other avenues.

Having considered the preliminary objection and the concession by learned Counsel for the applicant, I am satisfied that

the preliminary objection has legal substance. I, accordingly, uphold it.

As to the prayer by the applicant's advocate that this application should be marked withdrawn, I think the prayer is misplaced. After this court has upheld the respondent's preliminary objection, the proper course is not to have the applicant's application withdrawn, rather it is to struck out as it is misconceived and incompetent.

Consequently, this application is struck out with no order as to costs.



W.P. Dyansobera

Judge

3.8.2022

This ruling is delivered at Mwanza under my hand and the seal of this Court on this 3rd day of August, 2021 in the presence of Mr. Stephene Kaijage, learned Advocate for the applicant but in the absence of the respondent.



W.P. Dyansobera

Judge