

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IRINGA DISTRICT REGISTRY

AT IRINGA

CIVIL APPEAL NO. 09 OF 2022

DOMINICUS LUGALA APPELLANT

VERSUS

GLORIA MHEHE RESPONDENT

**((Being an appeal from the Judgment and Decree of District Court of
Iringa at Iringa))**

(Hon. R. MAYAGILO, RM)

dated the 26th day of May, 2022

in

Misc. Civil Application No. 01 of 2020

RULING

Date of Ruling: 15.08.2022

S.M. KALUNDE, J.:

This is an appeal against the decision of the District Court of Iringa at Iringa (Hon. R. MAYAGILO, RM) dated the 26th day of May 2022 in Misc. Civil Application No. 01 of 2020. The application before the District Court terminated in favour of the respondent hence the present appeal.

On the 15th day of August, 2022 when the matter was placed before me for ascertainment of compliance with Court orders, the appellant was represented by **Mr. Edrick Mwinuka**, learned

advocate whilst the respondent, who is unrepresented, appeared in person. At the outset Mr. Mwinuka hastened to inform the Court that appeal was incompetent before the Court for contravening the mandatory provisions of section 25(3) of **the Magistrates Court Act, Cap. 20 R.E. 2019 ("the MCA")**. In elaborating his point, the counsel intimated that the present appeal originated from Matrimonial Cause No. 07 of 2021 at the Isimani Primary Court. The counsel argued that since the matter emanated from the primary court the appropriate procedure would have been to institute the same before the District Court whereby the District Court would then forward the records to this Court. As for the way forward, Mr. Mwinuka informed the Court that he has already filed a fresh appeal at the District Court he thus prayed that the present appeal be struck out without costs.

The appellant, a layperson, had nothing important in reply, she agreed that the matter be withdrawn but raised a concern that the withdrawal might have been a technique by the appellant to delay her the enjoyment of the award in the distribution of matrimonial property issued by the Isimani Primary Court.

As pointed out by Mr. Mwinuka, and correctly so, the law procedure governing appeals in matters originating from primary courts is governed by the provisions of section 25(3) and (4) of the MCA. The sections read:

"(3) **Every appeal** to the High Court shall be by way of petition and **shall be filed in the district court** from the decision or order in respect of which the appeal is brought:

Provided that, the Director of Public Prosecutions may file an appeal in the High Court and, where he so files an appeal, he shall give notice thereof to the district court and the district court shall forthwith dispatch the record of proceedings in the primary court and the district court to the High Court.

(4) **Upon receipt of a petition under this section the district court shall forthwith dispatch the petition, together with the record of the proceedings in the primary court and the district court, to the High Court.**

[Emphasis is mine]

In view of the above cited provisions of the law it is mandatory that appeals originating from primary courts be lodged to the district court. The district court would then forward the petition of appeal together with the proceedings before the district court and primary court to this Court.

In the present case there is no dispute that the present matter originated from the decision of the primary court. The appellant then approached the district court, which ruled in favour of the respondent. Now that the appellant seeks to approach this Court, the appropriate process would be to lodge the appeal with the district


court which would then forward its records, together with those before the primary court, to this Court. Having contravened the above mandatory procedure, the present appeal is incompetent and ought to be struck out.

That said, I proceed to strike out the present appeal. Given that this matter originates from matrimonial proceedings, I make no order for costs.

Order accordingly.

DATED at IRINGA this 15th day of AUGUST, 2022.




S. M. Kalunde
JUDGE