

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL APPEAL NO. 48 OF 2021

(Appeal from the Ruling of the Kinondoni District Court (Hon. H.Kikonga – RM delivered on 26th January, 2021 in Misc. Application No. 161 of 2020)

JUMA MWAKAAPPLICANT

VERSUS

NASRA ABDALLAH JUMARESPONDENT

JUDGMENT

MRUMA,J.

The Appellant Juma Mwaka was the Defendant in Matrimonial Cause No. 136 of 2020 at Kimara Primary Court. The present Respondent Nasra Abdallah Juma was the Plaintiff.

Somewhere somewhat he decided to engage an advocate to represent him.

As it was the law, before the recent amendments, advocate were barred from appearing in primary courts, his advocate filed Miscellaneous Civil Application No. 161 of 2020 in the District Court of Kinondoni at Kinondoni requesting for transfer of his case to that court. It is application was dismissed and hence this appeal.

It is unfortunate that by the time the decision of this appeal is being sundered down the matter has been overtaken by events as per amendment done through the Written Laws (Miscellaneous Amendments) (No.3) Act of 2021 advocates are now allowed to represent parties before primary courts.

However since jurisdiction of the court is not conferred by the whimsy of the parties, engaging an advocates could not be a valid reason for transferring of a case from primary court to the District Court. The refusal to transfer the case did not deprive the Appellant the right to be heard in anyway. In my view the right to be heard is exhaustively exercised where a party himself has the opportunity to express himself in a language he understands. The position may be the same with the representations of an advocates. Some of the arguments may be made in English and in a form of reported story. There can be no doubt that changes in language and reported speech can to some extent change the real meaning of what was intended. It is therefore my conclusion that the right to be heard could be better exercised if a party is heard directly rather than being represented.

That said, this appeal is dismissed for want of merits. The Respondent will have her costs.



A. R. Mruma

Judge

24/3/2022