

**THE UNITED REPUBLIC OF TANZANIA  
JUDICIARY  
IN THE HIGH COURT OF TANZANIA  
(DISTRICT REGISTRY OF MOROGORO)  
AT MOROGORO**

**MISC.CIVIL APPLICATION NO. 28 OF 2022**

*(Arising from Matrimonial Cause No. 12 of 2019 from District Court of Morogoro and  
Civil Appeal No. 5 of 2021 from the High Court of Tanzania before Judge Chaba)*

**TUMAINI M. SIMOGA..... APPLICANT**

**VERSUS**

**LEONIA TUMAINI BALENGA..... RESPONDENT**

**RULING**

*Hearing date on: 19/8/2022*

*Ruling date on: 22/8/2022*

**NGWEMBE, J:**

The applicant is seeking leave of this court to appeal to the Court of Appeal against the judgement of this court delivered on 31<sup>st</sup> March, 2022. The applicant is aggrieved with this court's judgement and decree, hence his intention to exercise his right to appeal to the Court of Appeal.

According to the affidavit in support of the chamber summons, the applicant averred in paragraph 7 three legal issues capable of drawing the attention of the Court of Appeal. The first issue is on jurisdiction of the District Court in determining Matrimonial cause No. 12 of 2019



based on a certificate from Conciliation Board which was out of statutory time frame; second the disputants being salaried workers, therefore this court erred in using the principles laid down in the case of **Bi. Hawa Mohamed Vs. Ally Seif and Chakupewa Vs. Mapenzi and Another** in distributing the matrimonial properties; and the last issue (3<sup>rd</sup> ground) is related to contribution towards acquisition of the Big House located at Kingulwira. These are the grounds upon which the applicant is seeking leave of this court to appeal to the Court of Appeal.

Undoubtedly, an appeal vertically, from one court to another superior court is both natural justice and constitutional right. Whoever is aggrieved by a decision capable of being appealed against, such right is always provided for, unless the intended appeal is an abuse to the court process or is prohibited by law or there is no room for further appeal. In our jurisdiction, the ladder of appeal ends up at the Court of Appeal. Thereafter, the aggrieved party has no room for further appeal. Of course, there must be an end to every litigation, for the interest of the court of law, disputants, government and the general public. Endless litigation is uneconomical not only to the court and the disputants, but also to the government and the general public.

Despite the above understanding, even appealing to the Court of Appeal on matters originating from either Primary Court or District/Resident Magistrate Courts, must under section 5 (1) (c) of the Appellate Jurisdiction Act, Cap 141 R.E. 2019 is not an automatic right rather the intended appellant must apply and obtain leave of this court or the very court he intends to appeal to. The section is couched in a mandatory manner as quoted hereunder:-





**Section 5 (1) (c)** *"In civil proceedings, except where any other written law for the time being in force provides otherwise, an appeal shall lie to the Court of Appeal –*

*(c) with the leave of the High Court or of the Court of Appeal, against every other decree, order, judgement, decision or finding of the High Court"*

To the best, this section is intended to filter issues capable of being appealed against. Usually, the Court of Appeal is concerned with matters of law and its interpretations as opposed to material facts and evidences.

In respect to this application, the applicant Tumain M. Simoga being aggrieved with this court's judgement and decree before judge Chaba, intends to appeal to the Court of Appeal. In seeking to actualize his intention, he sought an assistance from learned advocate Professor Cypriacus Binamungu, who came up with three legal issues quoted above. At the same time the respondent as well procured legal assistance from learned advocate Said Ally Said. The two learned counsels apart from their pleadings, they exhaustively made their written submissions with several relevant authorities. However, at this juncture, I intend to discuss briefly on the three legal issues raised by the applicant hereunder.

The first issue is on expiry of the Marriage Board Conciliation certificate. According to the submission of the learned advocate for the applicant, the certificate from the Marriage Conciliation Board lives only six months thereafter, expires. Section 106 (2) of the Law of Marriage Act provide categorically the life span of that certificate up to six



months. Further argued that, the petition at the district court was accompanied with an expired certificate from the Conciliation Board, thus offended section 104 (5) of the Act. Accordingly, the learned advocate enticed this court that the whole trial by the District Court had a legal challenge capable of being heard by the Court of Appeal.

In turn, the advocate for the respondent stood firm to challenge the application by narrating the genesis of the dispute and why same landed before the district court instead of Primary Court.

Without going into details of the matter, lest may prejudice the intended appeal, I find the issue of jurisdiction is fundamental to be determined by the court of last instance in our jurisdiction. Accordingly, this ground satisfies the legal requirement to be considered by the Court of Appeal.

The second issue is related to contribution of the disputants in acquisition of matrimonial properties subject to division. Rightly so, the learned counsels have a meeting mind on this point, but departed only on the extent of contribution. Obvious section 114 of the Act is clear like a brightest day light not encumbered by any cloud. The section has met with several interpretations in numerous cases of this court and the Court of Appeal. The applicant has strongly submitted that both parties had financial capability in acquiring those properties. Thus, contrary to **Bi Hawa Mohamed Vs. Ally Seif (Supra)** where Bi Hawa was a house wife while the respondent herein is a salaried worker.

In the contrary, the respondent, convincingly argued that despite her salaried work, yet she never forgot her duties as a wife of the applicant.



I would therefore gather with the detailed arguments of the learned counsels, that the issue is on contribution on acquisition of the matrimonial properties. In the case of **Gabriel Nimrod Kurwijila Vs. Theresia Hassan Malongo, Civil Appeal No. 102 of 2018** Justice Mziray JA held:-

*"The issue of extent of contribution made by each party does not necessarily mean monetary contribution; it can either be property, or work or even advice towards the acquiring fo the matrimonial property"*

The Court went further to cite the case of **Yesse Mrisho Vs. Sania Abdu, Civil Appeal No. 147 of 2016** where the Court of Appeal held:-

*"There is no doubt that a court, when determining such contribution must scrutinize the contribution or efforts of each party to the marriage in acquisition of the matrimonial assets"*

I fully subscribe to the reasoning of the justices of appeal, and note that the list of contribution to the acquisition of matrimonial properties is not exhausted and closed, rather the door is still open depending on the evidences produced and the prevailing circumstances of each case.


In respect to this application, the respondent's counsel touched several other issues forming contribution of the respondent in their matrimonial properties, yet at this juncture, I think it is right to refrain from discussing the details of those issues as if I am seating as an appellate court against the decision of my fellow judge of the High



Court. I therefore, find the parties may have an opportunity to be heard by the Court of last instance in our jurisdiction.

In totality and for the reasons so stated, this application is merited same is granted, the issue of Jurisdiction of the District Court and validity of the petition of divorce are relevant and capable of being heard by the Court of Appeal. Likewise, the issue of extent of contribution to the acquisition of the matrimonial properties is capable of being heard and decided by the Court of Appeal. Based on these legal issues, leave is granted to the applicant to venture to the Court of Appeal as prayed. In the circumstance of this application, each party should bear his own costs.

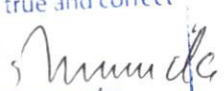


  
**P.J. NGWEMBE**  
**JUDGE**  
**22/08/2022**

**Court:** This Ruling is delivered in Chambers at Morogoro on this 22<sup>nd</sup> day of August, 2022, **Before S.J. Kainda, DR** in the presence of Prof. Binamungu Advocate, for the applicant and in the present in person of the respondent.

**Right to appeal to the Court of Appeal explained.**

**SGD: HON. S.J. KAINDA**  
**DEPUTY REGISTRAR**  
**22/08/2022**

I Certify that this is a true and correct	
copy of the original	
Deputy Registrar	30/8/2022
Date	at Morogoro