

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(TEMEKE HIGH COURT SUB - REGISTRY)

(ONE STOP JUDICIAL CENTRE)

AT TEMEKE

(APPELLATE JURISDICTION)

PC. CIVI APPEAL NO 4 OF 2022

*(Original Matrimonial Cause No. 86/2021 of the Primary Court Kigamboni District at Kigamboni
Before Hon. J. Massengi – PCM)*

OMARY HAMISI FARAJI.....APPELLANT

VERSUS

WAHIDA ELIESHI KYERIULOMI..... RESPONDENTS

ORDER

This is an appeal against the decision of a Primary Court. An Appeal from a Primary Court cannot be lodged directly to the High Court. It ought to start at the District Court. It seems the petitioner has been misled by the provisions of section 80 (1) of the Law of Marriage Act [Cap 80 R.E 2019] which provides: -

‘Any person aggrieved by any decision on order of a court of a resident magistrate, a district court or a primary court in a matrimonial proceeding may appeal therefrom to the High Court’

I have said this provision is misleading because the Revised Editions of the Laws of Marriage Act 2002 and 2019 reflect the contents of the original version of the Law of Marriage Act No 1 of 1971 regarding the provision of section 80. However, that section was amended by An Act to Amend Certain Written Laws, Act No 15/1980. The schedule to this Act amends the whole of section 80 by deleting it and substituting it in sub section one with the following: -

'80 – (1) Any person aggrieved by any decision or order of a Primary Court, or by any decision or order of a District Court, may appeal from that court, respectively, to the district court or the High court'

Therefore, an appeal in matrimonial proceedings from the Primary Court lies to the District Court not the High Court. I am certain the above amendment was inadvertently omitted during the laws revision of 2002 and 2019. I say so because the Act No 15 of 1980 has not been repealed nor section 80 (1) of the Law of Marriage Act was amended thereafter. From the foregoing, I hold that this appeal is incompetently before this court.

This appeal came to my attention at assignment stage and I cannot keep it in this court's register. In terms of section 28 (3) of the Magistrates Courts Act [Cap 11 R.E 2019], I summarily reject it. The Deputy Registrar should

comply with the provisions of rule 9 of the Civil procedure (Appeals in proceedings Originating in Primary Courts) Rules, G.N 312/1964 which requires service of a notice of rejection of the appeal to the appellant or his agent.

Further, since the misdirection on part of the appellant might have been occasioned by the publication of laws with errors, and since the time within which to lodge the appeal in the district court has expired, I suo motto, extended his appeal period for twenty (20) days from the date of this order. It is upon the Attorney General to correct the typing errors in the said provision of the Law of Marriage Act.



I.C. MUGETA

JUDGE

27/1/2022

Court: Delivered in chambers in the absence of both parties.

I.C. MUGETA

JUDGE

27/1/2022