

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE SUB- REGISTRY OF DAR ES SALAAM**

**AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION NO. 312 OF 2022**

**JUMA HAMIS ..... APPLICANT**

***VERSUS***

**AMINA RAMADHANI ..... RESPONDENT**

**(From the decision of this Court (Hon. Kakolaki, J) dated  
1<sup>st</sup> July, 2022 in PC Civil Appeal No. 7 of 2022)**

**RULING**

7<sup>th</sup> and 7<sup>th</sup> September, 2022

**KISANYA, J.:**

This application is predicated under section 5(2)(c) of the Appellate Jurisdiction Act, Cap. 141, R.E. 2019 (the AJA). The applicant has moved this Court to be pleased to certify the point(s) of law worth of consideration by the Court of Appeal. The decision subject to this application was made by this Court (Hon. Kakolaki, J,) in PC Civil Appeal No. 7 of 2022. Supporting the application is an affidavit affirmed by the applicant on 27<sup>th</sup> July, 2022.

Although paragraph 8 of the supporting affidavit shows that the matter subject to this application originates from Kerege Bagamoyo Primary Court, the impugned judgment and decree display that it originated from the District Court of Bagamoyo in Matrimonial Cause No. 01 of 2021.

Therefore, when this application was called on for hearing on 6<sup>th</sup> September, 2022, I wanted to satisfy myself on its competence by directing the parties to address the Court on whether a certificate on point of law is required if the matter originated from the District Court of Bagamoyo. As the applicant's counsel prayed for time to research on the said issue, hearing was adjourned to 7<sup>th</sup> September, 2022.

When the matter was placed before me for hearing today, the applicant was represented by Mr. Paul Mtui, learned advocate, whereas the respondent appeared in person.

From the very outset, Mr. Mtui conceded that the matter subject to this application did not originate from the primary court. He further conceded that the application is incompetent before this Court as there was no need of praying for a certificate on point(s) of law. However, the learned counsel prayed to withdraw the application. He also asked this Court to spare the applicant from paying costs. The respondent had no objection to the applicant's prayer. She urged the Court to consider her counter-affidavit in which she deposed that the matter originated from the District Court.

In the light of the foregoing, it is common ground that the proceedings subject to the impugned decision originated from the District Court. In terms of section 5(2) (c) of AJA, this Court certifies a point of law involved in the decision

or order pertaining to the proceedings under Head (c) of Part III of the Magistrates' Courts Act, Cap. 11, R.E. 2019 (the MCA). The said Head (c), Part III of the MCA refers to "Appellate and Revisional Jurisdiction of the High Court in Relation to Matters Originating in Primary Courts". That being the position, it is clear that certificate on a point of law is required if the proceedings giving rise to the impugned decision or order of this Court stems from the Primary Court. For that reason, I agree with Mr. Mtui that the application is incompetent before this Court.

As regards the prayer to withdraw the application, it settled law and I need not cite any authority, that an incompetent matter cannot be withdrawn, amended, or adjourned. The proper remedy against such is to strike out the same.

In the event, this application is hereby struck out with no order as to costs due to its nature.

DATED at DAR ES SALAAM this 7<sup>th</sup> day of September, 2022.



S.E. Kisanya  
JUDGE  
07/09/2022