

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

PC .CIVIL APPEAL NO.11 OF 2021

*(Arising from Civil Revision 09 of 2021 Bagamoyo District Court, Originating
from Matrimonial Cause No. 01 of 2021 Msoga Primary Court)*

SAMWEL LABANI..... APPELLANT

VERSUS

LULU WANGA..... RESPONDENT

JUDGMENT

Date of last Order: 22/09/2022

Date of Judgment: 4/10/2022

POMO, J

The Appellant is aggrieved with the decision of Bagamoyo District Court in Civil Revision No. 09 of 2021, the decision which was delivered on 14th February, 2022 as such he has filed the appeal herein.



Briefly, the appellant filed the above Civil Revision No.09 of 2021 challenging the decision of Msoga Primary Court in Matrimonial Cause No. 01 of 2021 which was heard and determined *ex parte* against the Appellant by granting the Respondent's petition for divorce. The Appellant applied before the said Msoga Primary Court to have it set aside but his application ended up being dismissed for want of merit. Thereafter, instead of appealing against the decisions of the trial primary court, the appellant took another course by filing revision before the District Court instead of an appeal. The said revision was decided against him on 14th February, 2022.

Having lost his revision before the District Court, has now filed the appeal herein with four grounds of appeal, which grounds are: -

- 1. That, the Resident Magistrate erred in law to uphold the decision of the trial court which granted a decree of divorce while there was no certificate from the Marriage Conciliation Board as required by law certifying that it has failed to reconcile the parties*
- 2. That, the Resident Magistrate erred in law to uphold the decision of the trial court that, the letter from Anglican Church amount to a valid Certificate of Marriage Conciliation Board*
- 3. That, the Resident Magistrate erred in law for failure to hold that a letter issued by Anglican Church does not amount to the*

prescribed Form No.3 issued by Marriage Conciliation Board as to the requirement of the law

4. *That, the Resident Magistrate erred in law in deciding that the decision of trial court was reached without procedural irregularities*

On the hearing date, the appellant appeared through Adam Lazaro Kasegenya, the learned advocate while the Respondent appeared in person unrepresented.

Submitting in support of the first ground of appeal, Mr. Kasegenya submitted that section 101 of the Law of Marriage Act, [Cap 29 R.E.2019] (hereinafter referred the Act) was not complied with when the Respondent petitioned for divorce as there was no certificate from the Marriage Conciliation Board. He contended that what was annexed in support of the petition for divorce is just a mere letter from the church (Lutheran Church) contrary to **Form No.3 made under rule 9(2) of the GN No.240 of 1971** which is issuable upon failure to reconcile the couples. To fortify his submission he cited to this court the decision of the court of appeal in **Hassan Ally Sandali Vs Asha Ally, Civil Appeal No. 246 of 2019 CAT at Mtwara (Unreported)** at pp. 13 – 15.



As to who should sign the certificate as to failure in reconciling the couples, the learned counsel cited **section 103(1) & (2) of the Act.**

Regarding the issue raised *suo motu* by this court questioning the propriety of the revision before the district court instead of an appeal, Mr. Kasegenya submitted that it was a proper cause to be taken by the Appellant herein. The reason he asserts is that the revision so filed was intended to rectify the illegalities committed by the trial primary court. He further contended that the trial court conducted the proceedings un-procedurally. On the other hand, he admits that room for appeal against the said findings of the trial primary court was there, but on their side they opted for revision. That marked the end of his submission.

Replying to the submission, the respondent who was unrepresented stated that the letter she attached in her petition for divorce before the trial court is the correct one and worthy to be regarded as a certificate of the marriage conciliation board. The letter was issued by the bishop of the Lutheran Church and the Appellant knew all these because at all times he refused attending the reconciliation.



As to the filing of Revision in the District Court instead of an appeal, her response was that the proper way could have been filing an appeal and not the revision.

Having heard the submission from both sides, this court find it pertinent to begin with the issue raised *suo motu* as to whether it was proper to file a revision case instead of an appeal in the district court against the trial court decision, Matrimonial Cause No.01 of 2021 Msoga Primary Court for that matter?

As correctly submitted by the counsel for the Appellant, the decision of the trial court leading to the Civil Revision No.9 of 2021 before the District Court is appealable, the position which the Respondent subscribes. If that is the case then, was it proper to file a revision case instead of appeal? In answering this, this court need to be guided by the following decisions of the court of appeal of Tanzania, to wit one, **Transport Equipment Ltd v. Devram Valambhia [1995] TLR 161** where it was held that:

"The appellate jurisdiction and revisional jurisdiction of the Court of Appeal of Tanzania are, in most cases mutually exclusive; if there is a right of appeal then that right has to be

*pursued and except for sufficient reason amounting to exceptional circumstances **there cannot be resort to the revisional jurisdiction** of the Court of Appeal."*

Secondly, this position was also taken in the case of **Augustino Lyatonga Mrema v. Republic [1996] TLR 267** where the Court of Appeal faced with analogous situation stated that:

"To invoke...powers of revision there should be no right of appeal on the matter the purpose of this condition is to prevent the power of revision being used as an alternative to appeal."

Thirdly, the same position has been re-stated in **D.P. Shapriya and Company Ltd vs Stefanutti Stocks Tanzania Ltd, Civil Application No. 205/16 of 2018 CAT at Dar es Salaam (unreported)** at page 9

Lastly, in **Dismas Chekemba Vs Issa Tanditse, Civil Application No. 2 of 2010 CAT at Tabora (Unreported)** at page 5, faced with akin scenario the court of appeal stated thus: -

*"Under the circumstances, **the revision is incompetent in that the Appellant had right of appeal but he chose***

not to appeal. This fundamental defect is sufficient to dispose of the revision". End of quote

It is very unfortunate that the district court didn't detect this defect and went on determining the merits of such incompetent revision.

Under the circumstances, this court finds that it was improper to file civil revision in the District Court of Bagamoyo instead of an appeal against Matrimonial Cause No.1 of 2021 Msoga Primary Court findings, that findings being appealable one. That being the case, even the appeal herein is incompetent as the same arises out of an incompetent judgment emanating from incompetent revision proceedings and judgment. Thus, this court invokes its revision power it has under section 31(2) of the Magistrates' Courts Act, [Cap. 11 R.E.2019] and hereby quash the proceedings and judgment thereto for emanating from an incompetent Revision. Likewise, this appeal having arisen from such incompetent civil revision before Bagamoyo District Court, then there is no valid appeal before this court. Thus, the same is hereby declared to be a nullity appeal and is hereby struck out with no order as to costs. This is because the shortcomings in filing revision case before the district court stand discovered and raised by this court.

It is so ordered

Right of Appeal explained

Dated at Dar es Salaam this 4th day of October, 2022



Musa K. Pomo

Judge

This Judgment is delivered on this 4th October, 2022 in presence
Yusuph M. Mkanyali, the learned advocate for the Appellant and in
presence of the Respondent.



Musa K. Pomo

Judge

4/10/2022