

THE UNITED REPUBLIC OF TANZANIA

(THE JUDICIARY)

IN THE HIGH COURT- DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

(PC) CIVIL APPEAL No. 39 OF 2022

*(Arising from the District Court of Bunda at Bunda in
Matrimonial Appeal No. 7 of 2021; originated from Kenkombyo
Primary Court in Matrimonial Cause No. 6 of 2021)*

KANWAGALE VEDASTUS MKAMA APPELLANT

Versus

JOSEPHINA JANUARY RESPONDENT

RULING

02.11.2022 & 02.11.2022

Mtulya, J.:

Mr. Kanwagale Vedastus Mkama (the appellant) had approached this court on 29th April 2022 and preferred **(PC) Civil Appeal No. 39 of 2022** (the appeal) to dispute a decision of the **District Court of Bunda at Bunda** (the district court) in **Matrimonial Appeal No. 7 of 2021** (matrimonial appeal), originated from **Kenkombyo Primary Court** (the primary court) in Matrimonial Cause No. 6 of 2021 (the case) between the appellant and **Josephina January** (the respondent).

However, the appeal was protested at preliminary stages by **Mr. Emmanuel Paul Mng'arwe**, learned counsel for the

respondent. The points of protest shows that: first, the appeal was preferred in *Kiswahili* language contrary to the 9th paragraph of the Schedule to the **Interpretation of the Laws (Use of English Language in Courts (Circumstances and Conditions), Rules GN. No. 66 of 2022** (the Rules); and second, the appellant seeks to quash the decisions of two (2) courts below which entered different decisions.

Today, when the points were scheduled for hearing, the appellant conceded the points and prayed to be granted leave to refile fresh and proper appeal. However, the prayer was protested by Mr. Mng'arwe contending that once a point of preliminary objection is raised, it has to be determined before granting leave or moving to the merit of the case.

I have perused the record of this appeal, paragraph 9 of the Schedule to the Rules and found that this appeal is bad in law as it contradict the provision in the Rules. The provision in the paragraph considers the circumstances and conditions where the law governing the matter subject of litigation and the practice and procedure which are not available in *Kiswahili* language to be filed in English. The paragraph has already received precedent of this court in **Zaid Jumanne Zaid v. Pili Rajabu Abdallah**, Land Appeal Case No. 9 of 2022, where the court held

that the appeal filed in Kiswahili language is incompetent. This court is bound by its own previous decision, unless there is good reason to depart from it. I see no good reason in the present appeal and hereby struck out the appeal for want of the law in paragraph 9 of the Schedule to the Rules. I do so without any order as to costs as the dispute concerns matrimonial issues.

Regarding a reply on the appellant's prayer to be granted leave to refile fresh and proper appeal, this court will not be detained on the subject as the practice is discouraged by our superior court, the Court of Appeal, as rightly stated by Mr. Mng'arwe (see: **Shahida Abdul Hassanal Kassam v. Mahedi Mohamed Gulamali Kanji**, Civil Application No. 42 of 199 and **R.S.A. Limited v. Hanspaul Automechs Limited & Another**, Civil Appeal No. 179 of 2016).



It is so ordered.

F. H. Mtulya

Judge

02.11.2022

This ruling was pronounced in open court in the presence of the appellant Mr. Kanwagale Vedastus Mkama and respondent's learned counsel, Mr. Emmanuel Paul Mng'arwe.

F. H. Mtulya

Judge

02.11.2022