

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF TANGA

AT TANGA

(PC) MATRIMONIAL APPEAL CASE No. 07 OF 2022

(Arising from the District Court of Korogwe at Korogwe in Matrimonial Appeal No. 4 of 2022 originating from Hale Primary Court in Matrimonial Cause No. 03 of 2022)

HASSAN MOHAMED MUSA ----- APPELLANT

Versus

SAUMU ABDALLAH MASOKOLA ----- RESPONDENT

JUDGEMENT

Date of Last Order: 04/11/2022

Date of Judgment: 11/11/2022

This is a second appeal. The first appeal being from Hale Primary court to Korogwe District Court. In law, it is trite principle of law that in a second appeal, the Court is expected to adjudicate on a point of law or points of law only and it is not expected to interfere with the concurrent findings of facts by the two courts below unless in rare occasions where it is shown that there has been a misapprehension of the evidence or misdirection causing a miscarriage of justice.



This principle was well discussed in the case of **William R. Gerison v. The Republic**, Criminal Appeal No. 69 of 2004 (unreported).

Grounds brought to this second appeal by the appellant Hassan Mohamed Mussa through his advocate Mr Chanjarika, are -

- 1. The learned senior resident magistrate erred in law and in facts for failure to find that the conditions governing the division of the matrimonial assets was not complied with.*
- 2. The learned senior resident magistrate erred in law and in facts for failure to find that, the division of the matrimonial assets made by the trial primary court was not proper, as there was no evidence given on the respondent's side to prove the extent of her contribution made towards the acquirement of the said properties*
- 3. The learned senior resident magistrate erred in law and in facts for failure to find that, since it was proved that the appellant is the one who contributed money to the acquirement of the said properties and nothing in money*

contributed by the Respondent, who was a housewife, the trial primary court was required to award to the respondent less than what it awarded to her.

It is without doubt that all these three grounds are matters of facts and not law. It follows that this court cannot legally entertain this appeal which is solely based on matters of facts and not law.

As if that is not enough, these grounds, on top of being matters of facts, they were not raised in the first appellate court. I have taken time to observe records forwarded to this court from the primary court and the District Court. The grounds of appeal raised at the District Court based on marriage conciliation, applicable law in divorce proceedings at the trial court, ill behaviors of the respondent and division of one property, the car.

Again, this being a second appellate court, new grounds cannot be entertained except those regarding the law. It is a matter of general principle that this Court will only investigate matters which came up in the lower court and were decided; not on matters which were not raised nor decided by the lower courts. (See the cases of

Abdul Athuman v. Republic [2004] T.L.R. 151, **Samwel Sawe v. Republic**, Criminal Appeal No, 135 of 2004, CAT and **Luma Manjano v. Republic**, Criminal Appeal No. 211 of 2009, CAT (both unreported), among others.

This position was best observed in Samwel Sawe's case (*supra*) in which it was stated that:

As a second appellate court, we cannot adjudicate on a matter which was not raised as a ground of appeal in the second appellate court. The record of appeal at pages 21 to 23, shows that this ground of appeal by the appellant was not among the appellant's ten grounds of appeal which he filed in the High Court. In the case of Abdul Athuman vs R (2004) TLR 151 the issue on whether the Court of Appeal may decide on a matter not raised in and decided by the High Court on first appeal was raised. The Court held that the Court of Appeal has no such jurisdiction. This ground of appeal is therefore, struck out.

The court in this situation is left with no option but to strike out this appeal as it lacks jurisdiction to entertain it for the reasons explained above. The appeal is thus strike out. This being a matrimonial case, I make no orders for costs.

DATED AND DELIVERED AT TANGA THIS 11TH DAY OF NOVEMBER 2022



LATIFA MANSOOR

JUDGE

11TH NOVEMBER 2022