

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
SUMBAWANGA DISTRICT REGISTRY
AT SUMBAWANGA
CIVIL REVISION NO. 01 OF 2022

*(Originates from Matrimonial Appeal No. 1 of 2022 Nkasi District Court and
Matrimonial Case No. 3 of 2021 Kipande Primary Court)*

KALISTA KAYAWE.....APPLICANT

VERSUS

ROBERT KALAPA.....RESPONDENT

RULING

Date of last Order: 04/11/2022

Date of Ruling: 14/ 12/ 2022

NDUNGURU, J

Before me is civil revision proceedings. The circumstances in which this court was prompted to take this course of action I find proper to set out the background of the matter briefly.

Following the written complaint by the applicant one Kalista Kayawe dated 16th of August 2022 to the High Court of Sumbawanga in relation to Matrimonial Appeal No. 01 of 2021, of Nkasi District Court originated from Matrimonial Cause No. 03 of 2021 of Kipande Primary Court, this court opened this civil revision proceedings No. 01 of 2022

suo motto under section 31 (1) of the Magistrate Courts Act, Cap 11 R: E 2019.

The matter first started at Kipande Primary Court where the applicant Kalista filed a matrimonial case No. 3 of 2021 seeking orders for divorce, division of matrimonial assets and custody of children. After heard both parties, the trial court found the parties have no valid legal marriage as they were living under presumption of marriage, hence declined to grant a decree of divorce, however the trial court proceeded to order division of matrimonial assets and custody of children based on the adduced evidence as regard those two matters.

Dissatisfied by the decision, the applicant appealed to the District Court of Nkasi against the decision of the Kipande Primary Court Matrimonial Appeal No. 01 of 2022. The District Court of Nkasi having heard the appeal delivered judgement which is the subject of this complaint by the applicant.

It is on record that The District Court of Nkasi delivered two judgments emanated from Matrimonial cause No 3/2021 of Kipande Primary Court which were both delivered on 21/06/2022. In both two judgments the parties are the same namely Robert Kalapa as appellant and Kalista Kayawe as respondent. However, one judgment referred

Chala Primary Court as the trial court where the appeal emanated and the petitioner being Asia Kayuni and the respondent being Siloni Mwakikonyola. The other judgement referred Kipande Primary Court as the trial court where the appeal emanated and the petitioner being Kalista Kayawe.

It is highly irregular for the court to produce two judgments in respect of the one matter as it was done in Matrimonial Appeal No.1 of 2022 of the District Court of Nkasi.

Having noted the above irregularity, I find the complaint by the applicant one Kalista Kayawe brought before this court is well founded, consequently I proceed to quash all the two judgments and orders of the District Court of Nkasi under section 31 (1) of the Magistrate Court Act, Cap 11 RE 2019. I do order for appellate magistrate to compose the proper judgment immediately in respect of the Matrimonial Appeal No. 1/2022 and the same to be delivered to the parties. No order as to costs.

It is so ordered.




D. B. NDUNGURU

JUDGE

14/12/2022