

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

MBEYA DISTRICT REGISTRY

AT MBEYA

MISC. CIVIL APPLICATION NO. 17 OF 2021

(Originating from Matrimonial Appeal No. 31 of 2018 of the High Court of Tanzania at Mbeya)

LWITIKO AMBINDWILEAPPLICANT

VERSUS

MARTHA A. MTWALERESPONDENT

RULING

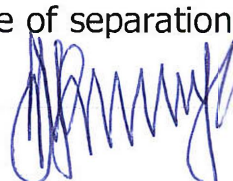
Date of last order: 28th October, 2022

Date of ruling: 5th December, 2022

NGUNYALE, J.

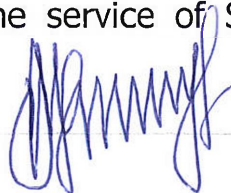
The applicant has moved this court to certify that there are points of law involved in Matrimonial Appeal No. 07 of 2019 in order to enable him to appeal to the Court of Appeal. The application is made under section 5(2)(c) of the Appellate Jurisdiction Act [cap 141 R: E 2019] and supported by the affidavit of the applicant. The application is opposed by the respondent through her counter affidavit.

Briefly, this matter originates from Primary Court of Mbeya District at Iyunga in Matrimonial Cause No. 39 of 2016 in which the respondent successfully petitioned for decree of separation and custody of issues of



the marriage. The dispute does not arise from the decree of separation perse, rather, from subsequent proceedings for division of house No. 06 and 170 located at Nzovwe-Mbeya considered to have been acquired jointly during the subsistence of the marriage, hence matrimonial properties. The primary court ruled that the houses were not the matrimonial property. Aggrieved the applicant appealed to the District Court of Mbeya in Matrimonial Appeal No. 31 of 2018 which upheld the decision of the trial court. Unhappy with the decision, the applicant filed the appeal to the High Court via Matrimonial Appeal No. 07 of 2019 where the decisions of the lower courts were reversed. The court declared house number 06 as a matrimonial asset, the applicant was to be given a share of 20% and the respondent 80% after valuation. House number 170 was declared to belong to their daughter Blessing, being a minor, the house was put under custody of the respondent. The applicant is further aggrieved by this judgment, he has filed notice of appeal to the Court of Appeal. Confidently, that the court has to certify that there are points of law involved for purpose of filing competent appeal, the applicant filed the present application.

When the matter came on for hearing the applicant was unrepresented whereas the respondent had the service of Steward Ngwale learned

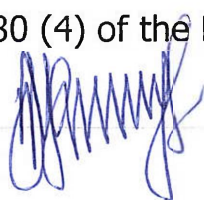


N. Mkubwa vs Edwin David Hamis, Civil Appeal No. 57 of 2017, CAT

in support of the preposition.

He contended that the High Court deliberated on the extent of contribution of each spouse and no provision of law was violated. He added the applicant has not merited in his submission that there are points of law for the court to certify for determination of the court of appeal. it was his submission that the applicant is applying delay tact to avoid execution of the judgment. Based on the above he prayed the application to be dismissed.

Having considered rival submissions by the counsel for the parties, the applicant wants this court to certify that there are point of law involved as proposed under paragraph 7 of the affidavit. The respondent has a contrary view that the applicant has not made out the case for the court to certify that there are points of law. The LMA especially section 80 governs appeal in matrimonial proceedings. It directs that where the appeal lies to the matter originating from] Primary Court, District Court Or Resident Magistrate Court or the High Court. In the instant application the matter commenced in the Primary Court through the District Court to the High Court as the second appeal. Appeals from the High Court to Court of Appeal are governed by section 80 (4) of the LMA which provides that;



'Any person aggrieved by a decision or order of the High Court in its appellate jurisdiction may appeal therefrom to the Court of Appeal on any ground of law or mixed law and fact.'

The above section gives automatic right to an aggrieved party from the decision of the High Court in its appellate jurisdiction to appeal to the Court on any ground be it law or mixed law and fact. The Court of Appeal had occasion to pronounce and restate the above law in the case of **Gabriel Nimrod Kurwijila vs Theresia Hassan Kalongo**, Civil Appeal No. 102 of 2018, CAT at Tanga (unreported) when it held that a certificate on a point of law in third appeals in cases arising from matrimonial proceedings is not a requirement in appeals to the Court. See also the case of **Helmina Nyoni vs Yeremia Magoti**, Civil Appeal No. 61 of 2020, CAT at Tabora (Unreported).

Flowing from the above, this court is hesitant to go into considering the merits of the proposed grounds, although it has jurisdiction to determine the same but it will serve no purpose to the parties. In the case of **Helmina Nyoni** (supra) the court was confronted with similar scenario, it held that;

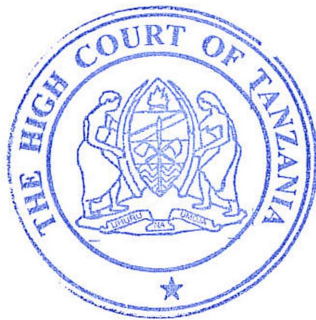
.... Worth for what it is, the certificate on a point of law certifying four points of law for the Court's determination under section 5 (2) (c) of the AJA is, but superfluous.



From the above it will be a wastage of time and resources to evaluate the proposed grounds if are fit to be certified as points of law while the appeal is competent without there be a certificate on point of law.

In the upshot, the applicant is at liberty to file his appeal to the court of appeal be that on the proposed ground or otherwise. The application is allowed, this being a matrimonial dispute I make no order as to costs.

DATED at MBEYA this 5th day of December, 2022




D.P. Ngunyale
Judge