

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**TEMEKE HIGH COURT SUB - REGISTRY**

**(ONE STOP JUDICIAL CENTRE)**

**AT TEMEKE**

**MATRIMONIAL CAUSE NO. 14 OF 2022**

**SADA JUMANNE SAID ..... PETITIONER**

**VERSUS**

**SAWA HAMISI KAZUBA.....RESPONDENT**

**RULING**

*28/09/2022 & 28/10/2022*

**OPIYO, J.**

The applicant petitioned this court for the orders that:-

- 1) The petitioner be declared as a sole person who has the absolute, unquestionable and exclusive mandate of management of Matrimonial properties and properties in the name of her disappeared husband Abdallah Hamisi Kazuba including all shops, matrimonial

home, motor vehicle and other properties which can be identified at any time as belonging to the disappeared husband.

- ) b) The petitioner to be declared as a sole person with powers to deal with all properties of Abdallah Hamisi Kazuba being it movable, immovable and untouchable properties such as shares, if any, and all bank accounts of her husband Abdallah Hamisi Kazuba at UBA bank, Amana bank, NMB bank and KCB bank and to search for any account if any to assess the accounts and operating the said accounts for interest of her and her children.
- 3) The petitioner to be declared as sole person with powers of making follow – up and collecting any dues amount entitled to her disappeared husband Abdallah Hamisi Kazuba.
- 4) The petitioner to be authorized by the court to collect any consignments of her disappeared husband.
- 5) Perpetual injunction to restrain the respondent or any of siblings or any person acting in that behalf from dealing with any properties of the petitioner’s husband save for if the petitioner authorizes the same.



6) Payment of general damages

7) Costs of the suit and any other orders to be determined by the court

The respondent raised a notice of preliminary objection filed in court on 16/9/2022 to the effect that the court has no jurisdiction to entertain the case. The preliminary objection was addressed by way of written submission upon consensus of both sides. Both parties were represented in this matter.

Mr. Msafiri Maberu learned counsel representing the respondent submitted in support of the preliminary objection that the High Court at Temeke one stop Centre was established by GN No 640 of 2021 under the Judicature and Application of Laws Act, where rule 2 of the order stated that.

“There is hereby established the one stop Centre of Temeke at Temeke High Court sub –Registry for purpose of speedy and effective trial of probate and administration cause and matrimonial matters originating from Dar Es Salaam Region”

From the provision above, he argued that this Court’s jurisdiction is limited or restricted based on both Geographical area and subject matter. On



subject matter, it is only mandated to deal with probate and administration matters and Matrimonial matters. But, looking on the petitioner's prayers she brought under matrimonial cause do not in any fall in the above two categories upon which the mandate of this Court is limited. Although the application is labeled as Matrimonial Cause No 14/2022, but critical looking reveals that this matter is contrary to section 77 of the law of marriage Act. Cap. 29 RE 2019 (LMA) which provides for jurisdiction of courts in matrimonial proceedings.

The above provision provides only for petitions for validity of ceremony (subsection 1), decree of separation (subsection 2) decree of annulment or decree of divorce subsection (3) and maintenance and custody of infant children or any other matrimonial relief as falling in matrimonial proceedings. In his view, the section says nothing similar to what is before the court. He submitted that where the court sit to determine or make inquiries into any case in which it has no jurisdiction, such proceedings will be declared as nullify by the superior court. He cited the case of **Melisho Sindiko vs. Julius Kaaya (1977) LRT No 18** to fortify his position. That, the question of jurisdiction is paramount in any proceedings and the same is so fundamental that in any trial even if it is not raised by the



parties at the initial stages it can be raised and entertained at any stage of the proceedings in order to ensure that the court is properly vested with jurisdiction to adjudicate the matter before it, he argued citing the work of Chipeta, J. ( as he then was) in his book Civil Procedure in Tanzania, student's Manual at page 7 with approval. He then prayed for the dismissal of the matter for lack of jurisdiction.

Mr. Hashim Mziray for the applicant strongly submitted in opposition. He stated that this court has jurisdiction to determine the matter. He argued that the respondents counsel did not construe correctly the GN. No 640/2021 rule 2 that established the court. The GN does not mention anywhere the meaning of matrimonial matters, so definition has to be gotten somewhere else. He argued that as their matter take a root from matrimonial matters covering welfare of a wife of the disappeared husband, who is a petitioner herein and her children and protection of matrimonial properties at the time she has to wait for the fate of her disappeared husband it is a matrimonial matter.


He continued to argue that the respondent's prayers are declaratory in nature and are therefore covered under section 77 (1) of the LMA referred



to above. He sited the case of **National Bank of Commerce Ltd V. National Chicks Corporation Ltd and 4 others, Civil appeal No. 129 of 2015** for the authority that designation by the chief justice of a certain court as a specialized court for adjudicating certain matters does not abrogate that divisions general mandate as stipulated by the constitution and Judicature and Application of Laws Act (written laws (Miscellaneous Amendments) Act, No. 3 of 2016). The purpose of establishing divisions or registries is to facilitate the administration and dispensation of judicial functions. They are meant to enhance expeditious and proper administration and management of certain categories of cases, he submits.

He also cited the case of **Odero Charles Odero vs. DPP**, that High Court has unlimited inherent original jurisdiction to adjudicate any legal matter unless there is express statutory provision to the contrary. Because the respondent did not provide any single provision that hindered jurisdiction of this court this court remains with its inherent jurisdiction to determine the matter.

I have considered the submission of both parties. It is an elementary principle of law that issues of jurisdiction of any court is primary as



provided by enabling provisions of law and parties can never confer jurisdiction to any court of law if it does not have. It follows therefore that, the issue of jurisdiction is not a matter of technicalities but it is fundamental and any trial by court which has no jurisdiction to try will be declared a nullity on appeal or revision. Even the fact that it would be convenient for the parties to have a proceeding heard in a particular court is therefore not enough to confer jurisdiction on such court if the said court lacks jurisdiction to try it.

The issue is whether this court is competent to hear this matter. This matter has been designated as matrimonial cause. It claims for declaratory orders to entitle the applicants to get sole control over the properties she claims to be matrimonial properties belonging to her husband who is alleged to have disappeared against his brother in law who also claims the rights over his disappeared brother properties. In my view, agreeing with the respondent's counsel, although the matter concerns what is alleged to have been matrimonial properties, but such claim is not covered by section 77 of the LMA to constitute matrimonial proceeding. The section enumerates what matrimonial proceedings entail. These include determination on validity of ceremony (subsection 1), decree of separation



(subsection 2) decree of annulment or decree of divorce subsection (3) and maintenance and custody of infant children or any other matrimonial relief as falling in matrimonial proceedings. They do not include claiming properties, even if a matrimonial properties from a third party. Matrimonial proceedings involve dispute between spouses. Therefore issues of jurisdiction to hear matrimonial proceedings are only those covered under section 77 of the LMA. Therefore, the petitioner's claims are not covered. The only remedy she has is to seek for legal redress before in a proper forum depending on the property or properties involved. I therefore dismiss the matter for lack of jurisdiction. No order as to costs



**M.P. OPIYO**

**JUDGE**

**28/10/2022**