

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 208 OF 2021

(Arising from the Judgment of the High Court in PC Civil Appeal No. 64 of 2020, Rwizile, J,
dated 08/04/2021)

WILBARD T. CHUWA..... APPLICANT

VERSUS

DOREEN W. MWANRI RESPONDENT

RULING

Date of last Order: 08/12/2021.

Date of Ruling: 18/02/2022.

E.E. KAKOLAKI, J

In this application preferred under sections 5(2)(c) of the Appellate Jurisdiction Act, [Cap. 141 R.E 2019] referred as AJA, supported by affidavit of the applicant himself, the court is moved by the applicant for certification that a point of law is involved in respect of the decision of this court, Rwizile, J in PC Civil Appeal No. 64 of 2020 dated 08/04/2021. The application is vigorously resisted by the respondent who sworn and filed her counter affidavit to that effect. Hearing of the matter proceeded by way of written

submission. The applicant is represented by Paschal G. Chuwa, learned advocate while the respondent enjoying legal aid for document and submission preparation from Women Legal Aid Centre (WLAC).

Briefly before Kinondoni Primary Court, the respondent (petitioner) successfully petitioned against the applicant for divorce decree, custody of one issue of marriage and division of jointly acquired matrimonial properties, whereby the court ordered 40% shares of the matrimonial house situated at Tegeta be apportioned to her. Aggrieved with that decision, the applicant successfully appealed to the District Court of Kinondoni in Matrimonial Appeal No. 08 of 2019, whereby the Primary Court decision was varied by awarding him 90% shares of the said house, while the respondent remaining with 10% of shares. Discontented with the appellate court's decision, the respondent successfully appealed to this court vide PC Civil Appeal No. 64 of 2020 whereby my brother Rwizile J, upon being satisfied with the evidence of respondent's contribution towards acquisition or improvement of the said house restored the Primary Court decision of 60% and 40% shares of the house to the applicant and respondent respectively. It is from that decision and in compliance with the provision of section 5(2)(c) of AJA the applicant has preferred this application, the intended appeal being the third appeal.

In an application for certification that a point of law is involved this court enjoys exclusive jurisdiction as it was held by the Court of Appeal in the case of **Eustace Kabalyenda Vs. Venancia Daudi**, Civil Appeal No. 70 of 2011 (CAT-unreported) where the Court observed:

“...But it is the High Court only which has been granted exclusive jurisdiction to certify to this Court that a point or points of law is or are involved in the impugned decision or order in respect of proceedings falling under Head (c) of Part III of the Magistrates' Courts Act, Cap. 11 R.E. 2002 (the MCA). The said provisions of the MCA deal with the appellate and revisional jurisdiction of the High Court in matters originating from primary courts.”

Having ascertained the jurisdiction of this court in entertaining the application before it, the issue before me is whether the applicant has discharged his duty of establishing that, a point of law is involved in the decision sought to be impugned worth consideration of the Court of Appeal. In discharging that noble duty, the applicant has to demonstrate that, the intended impugned decision of this court contravened as certain provision or principle of the law something which demands intervention of the Court of Appeal to rectify it. Mr. Chuwa for applicant, in his submission is of the contention that paragraph 6 of the applicant's affidavit points out a question

of law calling intervention of the Court of Appeal. He stated the point of law to be "whether the High Court and Primary Court erred in law in holding the view that, a party living in cohabitation with another party in a house owned and built by the latter-mentioned before the period of cohabitation, is entitled to a share of the house on a 60/40 shares basing on the strength of proof of domestic services only, without proof of extent of contribution and substantial improvement made to the house by the first-mentioned party." He argued, as section 114(2)(b) and (3) of the Law of Marriage Act, [Cap. 29 R.E 2019] does not provide the yardstick for assessing and determining the extent of party's contribution and the meaning and scope of substantial improvement to the matrimonial properties, then through the above cited issue the Court of Appeal will be availed with an opportunity to provide legal guidance to the courts and public at general on division of matrimonial properties. Mr. Chuwa implored the court to find the application is meritorious and proceed to grant the prayers sought in the chamber summons. The respondent on his part resisted the application contending that, the applicant has failed to satisfy this court that there is a point of law which needs Court of Appeal intervention. She argued, as far as the question of division of matrimonial house by 40% shares is concerned, the second

appellate court was justified to arrive at that conclusion after considering the extent of contribution made by each party in the acquisition of the said house as stated at page 3 and 4 of the typed judgment intended to be challenged. According to her there is no any disclosed point of law by the applicant worth consideration of the Court of Appeal, thus the application is devoid of merits and deserves to be dismissed.

Upon close follow up of the rival submission by the parties and perusal of the pleadings, I tend to agree with the respondent that, the applicant has failed to demonstrate to this court any point of law or principle of law infringed, that called for attention of the Court of Appeal so as to warrant this court exercise its discretion in granting the application as prayed in the chamber summons. There is nothing he has deposed in paragraph 6 of his affidavit establishing a point of law in the intended impugned decision as Mr. Chuwa would want this court to believe. To let the applicant speak for himself I quote paragraph 6 of his affidavit going thus:

6. That I have consulted my lawyer one Paschal G. Chuwa, who advised me that this court erred in awarding the respondent 40% shares of the matrimonial assets without proof of extent of her contribution to the properties.

What is gleaned from the affidavit is the piece of advice which the applicant received from his lawyer stating that, the court was in error to award the respondent 40% shares of the matrimonial house without proof of extent of contribution to it, and not the point of law or principles of law allegedly infringed by the second appellate court to satisfy this court that, the point of law is involved in the decision sought to be challenged. The issue as to whether the Primary Court and High Court was justified to award 40% shares of the house to the respondent without proof of contribution and substantial improvement if any, existed as raised by Mr. Chuwa in his submission in my humble view carries no legal question worth determination by the Court of Appeal, but rather of fact as it requires consideration and analysis parties evidence on their contribution towards acquisition or improvement of matrimonial properties.

It is from the fore stated reasons I am satisfied that, this application is devoid of merits and proceed to dismiss it as I hereby do.

Given the nature of the case, I order each party to bear its own costs.

It is so ordered.

DATED at DAR ES SALAAM this 18th day of February, 2022.

E. E. KAKOLAKI

JUDGE

18/02/2022.

The Ruling has been delivered at Dar es Salaam today on 18th day of February, 2022 in the presence of the Applicant and the Respondent in person and Ms. Asha Livanga, Court clerk.

E. E. KAKOLAKI

JUDGE

18/02/2022

