

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF DAR ES SALAAM

AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATION NO 666 OF 2020

(Arising from the Judgment and Decree of this Court (Kakolaki J) in Matrimonial Appeal No 34 of 2020; arising from the Judgment and decree of the District Court of Ilala in Matrimonial Appeal No 27 of 2019 and Original Matrimonial Cause No 182 of 2019 of Ukonga Primary Court)

BETWEEN

ALLY SEIF MWANZI.....APPELLANT

Versus

HALIMA ALLY ENZIMBALI.....RESPONDENT

RULING

MRUMA, J

This is an application for leave to appeal against the Judgment of this Court (Kakolaki J) in PC Civil Appeal No 34 of 2020 brought under Rule 43 of the Court of Appeal Rules.

Initially this matter was assigned to my brother in bench his Lordship Rwizile J, before he was transferred to another working station whereupon the matter was re-assigned to me. His Lordship Rwizile J,

had ordered the application to be argued by way of written submissions and made a schedule for filling written submissions.

Parties complied with the filling schedule and the following is my ruling of the matter.

The applicant filed this application under Rule 43 of the Court of appeal Rules. The said rule provides as follows

- (1) The Registrar shall send to the High Court or Tribunal, a sealed copy of the order embodying the decision of the Court in any civil or criminal appeal from that court
- (2) The Registrar shall, so as is practicable, inform any party to any proceeding in the Court who was not present or represented at the hearing of the result of such proceedings;
- (3) A deputy Registrar shall send to the Registrar a copy of every order out of his sub-registry;
- (4) A deputy Registrar shall send to the court of first instance or trial court a copy of the Judgment.

The main ground for this application is that his Lordship the appellate judge of this court erred in principle for failure to evaluate the evidence on record and two, that the learned Judge failed to note that

the Appellant was challenging the decision of the primary court in the High court.

In law leave to appeal to the court of Appeal in matters originating from the primary court must be on points of law only.

In the present application despite the fact that there is no point of law pleaded by the Applicant worth consideration by the highest court of the land, the application itself is brought under none enabling provision of the law. Rule 43 cited by the Applicant do not vest any power to this

I must say that the law regarding wrong citation of enabling law is well settled. It is to the effect that wrong citation as well as the non-citation of the enabling provisions of the laws renders the application incompetent. This has been stated in a number of decided cases when the court was faced with similar circumstances as the one at hand. For instance in the case of **Hussein Mgonja versus The Trustees of the Tanzania Episcopal Conference, Civil Revision No.02 of 2002, CA** (unreported), the Court of Appeal when striking out an application on the ground of incompetence stated thus;

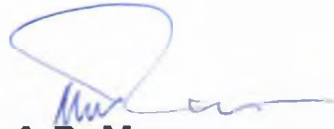
*"If a party cites the wrong provision of the law,
the matter becomes incompetent as the court
will not have been properly moved"*

Also see, **Edward Bachwa & Three Others vs The Attorney General & Another, Civil Application No. 128 of 2006** where the Court of Appeal had similar view.

In the present application the Applicant is moving the court under non-applicable provision of the law. The provision he has cited does not cloth this court with any power to do what it is required to do. Accordingly this court cannot do what it has been asked to do because the Applicant has not empowered it so to do and even if it was so properly moved (which is not the case), there is no point of law fit for certification to the Court of Appeal.

In the result for the reasons stated herein above this application is dismissed with no order as to costs as parties were (according to the records) husband and wife once upon a time.

It is so ordered.



A.R. Mruma

Judge



Dated at Dar Es Salaam this...^{7th}.....day of May, 2022.