

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(IN THE DISTRICT REGISTRY OF KIGOMA)**

**AT KIGOMA**

**(APPELLATE JURISDICTION)**

**MISC. MATRIMONIAL APPLICATION NO. 01 OF 2021**

(Arising from PC Matrimonial Appeal No. 3&7/2021 of the High Court Kigoma before Matuma, J.)

**KASHINDI D/O HAMISI ZAIDI.....APPLICANT**

**VERSUS**

**ATHUMANI S/O OMARY ATHUMANI.....RESPONDENT**

**R U L I N G**

19/4/2022 & 28/4/2022

**L. M. MLACHA, J.**

This is a ruling on an application filed by the applicant, Kashindi Hamisi Zaidi, seeking an order of this court certifying points of law for determination by the Court of Appeal in her appeal against the decision of this court made in consolidated (PC) Matrimonial Appeal No. 3 & 7 of 2021 (Matuma J). The points sought to be certified are contained in para 5 of her affidavit. The respondent, Athumani Omary Athumani is opposing the application. He has lodged a counter affidavit sworn by his counsel, Sadiki Aliko.

Hearing was done by oral submissions. The applicant appeared in person while the respondent had the services of Mr. Sadiki Aliko. It was the

submission of the applicant that there was no valid certificate from the ward tribunal certifying that the marriage had broken down beyond repair. The document which is attached is nothing but a forgery. She relied on the decision of the Court of Appeal made in **Hassan Ali Sandali v. Asha Ally**, Civil Appeal No. 246 of 2019 she proceeded to submit that the High Court made an order to send the children to the respondent without looking at the best interests of the children contrary to section 125(b) of the Law of Marriage Act. She added that the father had no care for the children. He deserted them. Further that he has no time to care for the children because he leaves early in the morning for work and return at 10:00 P.M. This means that the children will be under the care of their staple mother something which is wrong for the reality is that no woman can care the child of another woman. She can only torture him.

Speaking of division of matrimonial assets, the applicant said that the high court erred in ordering the house where she lives to be sold and shared at 40% (applicant) and 60% (respondent) without observing her contribution. It also erred in leaving 2 houses to the respondent on the pretext that they are not matrimonial houses. She added that the court erred in refusing the

existence of cars while there was evidence from the respondent who admitted that he had 3 cars.

Submitting for the respondent, Mr. Sadiki Aliko argued the court to dismiss the application saying that all what has been said is an after thought. Further that all what has been submitted is not in the evidence on record. Counsel argued that the applicant did not raise them in the primary, district or High Court making the submission an after thought. He went on to say that if the certificate had a problem that could be a subject of an objection at the primary court not here. He said that the case she cited had different circumstances. That, the court was speaking of a letter not certificate as was in this case.

Counsel responded to custody of children and said that the applicant had a chance to request the judge to call the children but did not do so. He went on to say that the question of the house where she is living is not a legal issue. He added that the decision of this court on the matter was based on section 114 (1) of the law of marriage Act and is legal. He referred the court to **Samwel Moyo v. Mary Kasian Kayombo** [1999] TLR 197 on this aspect. He argued the court to dismiss the application.

I had time to read para 5 of the affidavit in line with the decision of this court. With respect to the submission of the learned counsel, I have seen a number of legal issues worthy the attention of the Court of Appeal. I will not go to discuss them for I am not an appellate forum. My duty is limited to seeing if there is a point of law worthy the attention of the Court of Appeal.

Having examined the record critically, I will certify the following points;

- 1. Whether it was legally proper for the High Court to make the decision without a valid certificate from the Board as required by Section 104(5) of the Law of Marriage Act, Cap. 29 R.E. 2019.*
- 2. Whether it was proper for the High Court to give the respondent custody of the children without cross checking the best interest of the children as required by section 125(2)(b) of the Law of Marriage Act.*
- 3. Whether it was legal for the High Court to make the division of the matrimonial assets and leave other assets out.*
- 4. Whether it was legal to find that some assets belonged to the respondent's father.*
- 5. Whether it was legal for the high court to quash the order which directed the applicant to be paid Tshs 8,372,000/=.*

The application is granted as shown above. It is ordered so. Costs to follow the event.



**L.M. Mlacha**

**Judge**

**28/4/2022**

**Court:** Ruling delivered. Right of Appeal explained.



**L.M. Mlacha**

**Judge**

**28/4/2022**

ORIGINAL