

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

AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATION NO. 98 OF 2023

*(Arising from the High Court of Tanzania, Dar es Salaam District Registry,
in the Civil Appeal No. 49 of 2019)*

ANTONY MAZIKU..... APPLICANT

Versus

ELIZABETH MAZIKU RESPONDENT

RULING

08/06/2023 & 16/06/2023

BWEGO GE, J.

The applicant herein above named instituted an application praying for grant of leave on point of law to appeal to the Court of Appeal against the whole decision of this court in Civil Appeal No. 49 of 2019 which was delivered on 28th May, 2021. The application herein is brought under section 5 (1) (c) of

the Appellate Jurisdiction Act [Cap 141 R.E. 2019] and supported by the affidavit of the applicant.

The background of the matter herein, as entailed by the record hereto, is as follows: The parties herein were legally married in 1981. The same were blessed with three children and acquired landed properties in Kigoma, Ifakara-Morogoro and herein Dar es Salaam. The record further entails that the marriage between the parties herein was marred by irreconcilable disputes. Eventually, the marriage fell apart in 2017 when the respondent left the matrimonial home alleging constructive desertion. Thereafter, the parties herein lived asunder.

In 2019 the respondent commenced matrimonial proceedings in the District Court of Ilala for a decree of divorce and distribution of matrimonial assets, among others. Upon hearing the parties on merit, the trial court allowed the petition and entered an order of equal distribution of properties. The applicant was not amused. He preferred an appeal in this court, specifically challenging the order for distribution of matrimonial assets on an equal basis without proof of contribution of each party in the acquisition of the same and, or their existence, among others.

This court had re-evaluated the evidence on record and reached the conclusion that the appeal was without merit. The decision and orders of the trial court were upheld save the order of equal contribution of matrimonial assets which was modified with an order that each party shall be entitled to 50% of the matrimonial assets based on the valuation fallout save the house situated at Kigoma which 70% share was allotted to the applicant and 30% share to the respondent. The applicant, likewise, was aggrieved with the decision of this court. Hence, this application.

The applicant was represented by Mr. Mashiku Sabasaba and the respondent had the service of Godfrey Kizito, learned Advocates.

The respondent's counsel didn't contest the application herein and prayed this court to consider whether the application is merited to warrant grant, the obligation I am now bent to discharge.

The grant of leave to appeal to the superior court is not automatic. It is only granted when it is demonstrated that there is a point of law, matter of sufficient importance and, or arguable appeal to warrant attendance by the superior Court. See the cases of **British Broadcasting Corporation vs. Eric Sikujua Ng'maryo**, (Misc. Civil Application No. 138 of 2004)

[2005] TZCA 93; ***Regional Manager TANROADS Lindi vs DB Shapriya Company Ltd*** (Civil Appeal No. 86 of 2020) [2017] TZCA 233; and ***Integrated Property Investment (T) Limited and 2 Others vs The Company for Habitat and Housing in Africa***, Civil Appeal No. 107 of 2015, CA (unreported); among others.

The affidavit supporting the application is brief one, only bearing the proposed issues of the law and facts for consideration by the court of appeal, namely: -

- 1. Whether it was proper and lawful for the High Court to grant equal distribution of matrimonial assets without any proof of equal contribution by the respondent in the acquisition of the same.*
- 2. Whether it was proper and lawful for the High Court to grant distribution of the Property which had been acquired by personal efforts of the applicant.*

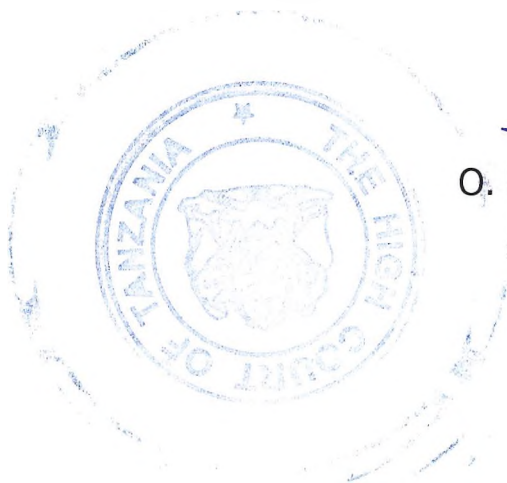
Upon scrutiny of the purported point of law and facts, this court finds that the same are merely points of facts based on evidence. The said factual issues were discussed at length by the trial court and this court on appeal. I need not reiterate that this court subscribed to the conclusion of the trial

court. Therefore, I am of the considered opinion that there is no arguable factual issue(s) to be certified for attendance of the Court of Appeal.

In view of the foregoing premises, I find the application herein bereft of substance. The application is hereby dismissed. Considering the matter herein was not contested, I make no order for costs.

Order accordingly.

Dated at Dar es Salaam this 16th June, 2023.



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O. F. Bwegoge
JUDGE