

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**TEMEKE SUB-REGISTRY**  
**(ONE STOP JUDICIAL CENTRE)**  
**AT TEMEKE**

**MISC. CIVIL APPLICATION NO.45 OF 2022**

(Arising from the decision of this court)

(Mugeta, J)

Dated 11<sup>th</sup> August 2022

in

Civil Revision No. 1 of 2022

**ABDIEL REGINALD MENGI AND**  
**REGINA MENGI**

*(Administrators of the Estate of the late Mercy Anna Mengi).....***APPLICANTS**

**VERSUS**

**JACQUELINE NTUYABALIWE MENGI.....1<sup>st</sup> RESPONDENT**

**JACQUELINE NTUYABALIWE MENGI** as a  
Next friend of JAYDEN KIHIZA MENGI (a minor).....**2<sup>nd</sup> RESPONDENT**

**JACQUELINE NTUYABALIWE MENGI** as a  
Next friend of RAYAN SAASHISHA MENGI (a minor).....**3<sup>rd</sup> RESPONDENT**

**ABDIEL REGINALD MENGI AND BENJAMIN**

**ABRAHAM MENGI** *(Administrators of the Estate of the*  
*late REGINALD ABRAHAM MENGI).....***4<sup>th</sup> RESPONDENTS**

## **RULING**

15<sup>th</sup> August & 29<sup>th</sup> September 2023

**Rwizile, J.**

On 11<sup>th</sup> November 2022, this court (Mugeta J) nullified the settlement decree dated 11<sup>th</sup> November 2021 that originated from Matrimonial cause No. 8 of 2015, from the District Court of Kinondoni. The reasons for doing so were well stated in the judgment. It is from that decision; the applicants were aggrieved. Under section 5(1)(c) of the Appellate Jurisdiction Act, Rule 45(a) of the Court of Appeal Rules and Order XLIII, Rule 2 of the Civil Procedure Code the applicants applied for leave to appeal to the Court of Appeal.

The chamber application filed on that behalf is supported by the affidavit of the applicants. The respondents also filed the counter affidavit opposing the same.

MS Nakazael Tenga, Mr. Mfinanga, and Mr. Laizer learned advocates appeared for the applicants, while Mr. Joseph Rugambwa learned advocate represented the 1<sup>st</sup> to 3<sup>rd</sup> respondent, and the 4<sup>th</sup> respondent is represented by Mr. Roman Lamwai who did not contest this application.

When making oral arguments before this court, Ms. Nakazael Tenga briefly told this court that under paragraph 7 (a-q) of the affidavit supporting this

application, reasons for applying for leave have been shown. In support, the applicant cited the case of **British Broadcasting Corporation vs. Erick Sikujua Ng'imaryo**, Civil Application No. 138 of 2004. The learned counsel therefore asked this court to grant this application.

On his party, Mr. Joseph Rugambwa submitted that this application is incompetent for being supported by a defective affidavit sworn by only one applicant. It should therefore be struck out since it is against the law as held in the case of **Mohammed Abdallah Nur and 3 Others vs. Hamad Masauni and 2 Others**, Civil Application No. 436/16 of 2023. According to the learned counsel, for an application for leave to succeed, there must be an arguable case that has not been shown. In his view, the illegality stated has not been shown, and therefore, he added, the case of **British Broadcasting Corporation vs. Erick Sikujua Ng'imaryo** (supra) should be disregarded.

In the rejoinder, it was argued that the ruling of the court held that it is illegal for one spouse to maintain another. This, according to her is an illegality and the court of appeal has to determine the same. It was her view that the applicants are dealing with these cases in their capacity as administrators, who under section 104 of the Probate and Administration Act

(PAEA), one person may act for the other. She prayed, the application be granted.

Upon reading the pleadings and the relevant law, it is clear to me that the application arose from a matrimonial cause. I am certain, it is because the decision of this court nullified the deed of settlement in Matrimonial Cause No 18 of 2015. The law that deals with appeals in matrimonial proceedings is the Law of Marriage Act. Section 80(4) of the same provides an automatic right of appeal on a point of law or fact or a mixture of both. It states as hereunder;

*Any person aggrieved by a decision or order of the High Court in its appellate jurisdiction may appeal therefrom to the Court of Appeal on any ground of law or mixed law and fact.*

Considering the law, and the decision of the Court of Appeal in the case of **Hermia Nyoni vs. Yeremia Magoti**, Civil Appeal No. 61 of 2020. I think, the situation applies in the circumstances of this case. It is clear to me that the provision applies when the court sits on appellate or revisional capacity, the remedy in matrimonial proceedings is to automatically file an appeal to the Court without leave of this court. This application therefore was not

desired, I am bound to dismiss it. The applicants have to file their appeal without leave of this court. I make no order as to costs.



**A.K. RWIZILE**

**JUDGE**

**29.09.2023**