

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
SHINYANGA SUB REGISTRY
AT SHINYANGA

MISC. CIVIL APPLICATION 20240114000000641

*(Arising From the Judgment in the High of the United Republic
of Tanzania at Shinyanga, (Hon. Justice Kulita) in Pc. Civil
Appeal No.13 of 2023)*

HELENA WILLIAM JAMESAPPLICANT

VERSUS

PAUL MASANJA EMMANUELRESPONDENT

RULING

19th & 25th March 2024

F.H. Mahimbali, J

The applicant herein sought a certificate of this court that there is a point of law involved worthy to be determined by the Court of Appeal of Tanzania against the whole Judgement and Decree of this Court given by Hon. S.M, Kulita, J on 30/11/2023 in Pc. Civil Appeal No. 13 of 2023. In the said judgement, this Court partly allowed the appeal.

The application has been brought by way of Chamber Summons under S. 5(c) of the Appellate Jurisdiction Act, Cap 141 RE 2022 and

accompanied by an affidavit of **HELENA WILLIAM JAMES**, the applicant.

Disgruntled with the findings of this Court, the applicant filed the current application for certification that there is a point of law involved which needs attention of the Apex Court.

The affidavit in support of the Chamber Summons sworn by **HELENA WILLIAM JAMES**, at paragraph 4 thereof, stipulates as grounds for the intended appeal, thus;

- i) That the 2nd appellate Court erred in law by failure to interpret section 114 (1) of the Law Marriage Act, Cap 29 RE 2019.
- ii) That, the 2nd appellate court erred in law by disregarding that the key and material witness must be called to testify before the Court as he or she had information and knowledge on the subject matter.
- iii) That the 2nd appellate court erred in law by considering personal properties as matrimonial properties and divided it to the respondent.
- iv) That the 2nd appellate court erred in law by not distributing the spare parts shop which the applicant was the supervisor for ten years consecutively.

When the matter was scheduled for hearing, both parties were present in person and unrepresented.

Arguing to the application, the **applicant prayed that this court be pleased to certify as to whether there is** a point of law to go to CAT after being dissatisfied by the decision of this court (Kulita J), She also prayed that her affidavit be adopted to form party of her submission.

She also added that as per paragraph 13 of her adopted affidavit, the notice of appeal is wrongly referred as dated 18/11 /2023 instead of 21/12 /2023. It be rectified to read dated as 21st December 2023. Also, in paragraph 6 of her affidavit, it be read as 21st December 2023 instead of 18th November 2023. Also, as per paragraph 2 of her affidavit, it be read as matrimonial case No. 98 of 2022 and not 68/78 of 2022. She thus finally prayed for her application to be granted.

In reply to the proposition by the applicant, the respondent prayed for the dismissal of the application as there is nothing for determination by the CAT in the alleged grounds for this Court's certification. He is also of the considered view that, what the lower courts ruled is right as per law. Thus, prayed for his affidavit in opposition of the application be adopted by the Court to form part of his submission against the

application. Furthermore, as regards to the notice of intention to appeal, he stated that he is not copied with the said alleged notice of appeal though in her affidavit she is referring having lodged it on 18th November 2023 while the said judgment appealed against was pronounced on 30th November 2023.

He therefore submitted that, this application is just intended as wastage of time from enjoying his right so far granted to him. Thus, he prayed for the application to be dismissed as it is baseless.

In rejoinder, the applicant maintained her submission in chief. She also added that her affidavit in support of the application be well digested in consideration of the application.

Having examined the Chamber Summons and its supporting affidavit, the counter affidavit and parties' rival submissions, the issue to be resolved is whether the applicants have shown sufficient issues to be determined by the Court of Appeal.

Since certification on point of law is not automatic, this Court will have to consider whether or not the grounds raised in paragraph 4 of the affidavit qualify to be certified, that they contain points of law worth determinable by the Court of Appeal of Tanzania.

It is further notable that in applications to certify that there are points of law to be considered by the Court of Appeal in the intended appeal, are serious legal applications. They are much deliberative than applications for leave to CAT. Unlike applications for leave in which the High Court is more interested whether there are arguable grounds factual or legal, in applications for certification on point of law, the High Court's duty is to determine whether the said proposed as a point of law, is worth determinable by the Court of Appeal. In the case of **AH Vuai AH Vs. Suwedi Mzee Suwedi** [2004] TLR 110, the Court of Appeal held:

"Certificate on a point of law is required in matters originating in Primary Courts/ it is provided therein that an appeal against the decision or order of the High Court in matters originating in Primary Courts would not be unless the High Court certifies that a point of law is involved in the decision or order in the case of DORINA N. MKUMWA VERSUS EDWIN DAVID HAMIS, Civil Appeal no. 57 of 2017, the Court of Appeal regarding application on certificate on point of law. It is therefore self-evident that applications for Certificates of the High Court on points of law are serious applications. Therefore/ when High Court receives applications to certify point of law, we expect

Rulings showing serious evaluation of the question whether what is proposed as a point of law, is worth to be certified to the Court of Appeal. This Court does not expect the certifying High Court to act as an electrical conduit to allow whatsoever the intending appellant proposes as point of law to be perfunctorily forwarded to the Court as point of law "

Guided by the above principles, in reflection with the case at hand, it has been argued that there are points of law which need attention of the Court of Appeal of Tanzania. I have looked upon the issues raised which need intervention of the Court of Appeal, indeed are legal issues which are to be settled by the Court of Appeal of Tanzania.

It is clear without scintilla of doubts that it is unsettled for instance our law provides that one who alleges must prove. see Section 110 TEA and thus there is no number of witnesses required in proving the case. see section 143 of TEA, then the question to ask is whether the court is bound to call material witness when not brought by the parties. Therefore, issue no.(ii) in para 4 of the applicant affidavit needs attention of the CAT deliberation.

However, it is not well settled as to whether the personal properties are eligible for division in matrimonial cause when found that the alleged

properties were developed jointly by the parties. Meanwhile, it is not settled as to whether being a supervisor of matrimonial properties for number of years does it confer automatic right of ownership over the said property?

All these issues in my considered view need a legal recourse and thus worth determinable by the Court of Appeal.

With the above analysis, the application by the applicant has merit and consequently is hereby granted as prayed. All grounds are hereby certified as point of law worth determinable by the Court of Appeal.

No orders as to costs

DATED at Shinyanga this 25th day of March, 2024.



F.H. Mahimbali

Judge