

IN THE HIGH COURT UNITED REPUBLIC OF TANZANIA

TEMEKE HIGH COURT SUB – REGISTRY

(ONE STOP JUDICIAL CENTRE)

AT TEMEKE

MATRIMONIAL CAUSE NO. 7 OF 2023

KHADIJA ABDURAHMAN MSUYA

NEE MOLLEL NEE MADEBE..... PETITIONER

VERSUS

DR. AZIZI SHABAN MSUYA.....RESPONDENT

RULING

Last Order date: 05.12.2023

Ruling Date: 05.02.2024

M. MNYUKWA, J.

Petitioner Khadija Abdurahman Msuya through her advocate Peter Kibatala from Tan Africa Law filed a petition in Temeke High Court Sub – Registry through Matrimonial Cause No.7 of 2023 (*henceforth* “Main Case”) which was filed in this Court on 3/10/2023. Alongside, the petitioner also filed Misc. Civil Application No. 65 of 2023 under certificate of urgency.

On 5/12/2023 when the application was scheduled for hearing, the court *suo motto* inquired the parties to address on the appropriateness of the Misc. Application No. 65 of 2023 the basis of this query is to ascertain if this Court has jurisdiction to entertain the matter whose cause of action arose from Coast Region. By the consent of the parties and with the leave



of the court, the issue raised was heard and determined in the Main case which is the Matrimonial Cause No 7 of 2023 since the Misc. Civil Application No. 65 of 2023 arises from the Main Case.

For better understanding of this petition, it is convenient to briefly narrate facts leading to the same. It is on record that petitioner and respondent are spouses. As per paragraph 1.0 of the petition, petitioner lived and worked for gain in Bagamoyo and Dar es Salaam while respondent is a resident of Bagamoyo, Coast Region (see para 2.0 of the petition). It is alleged by the petitioner that their marriage reached a breaking point hence filing of a petition for divorce (Matrimonial Cause No. 7/2023) and the Misc. Civil Application. Further, it is also on records that the cause of action arose from Bagamoyo, coast region. However, it is with no doubt that petitioner believed that this Court has jurisdiction to entertain this petition and the application.

At the hearing parties were represented, for the petitioner was Mr. Alphonse Nachipyango learned advocate while Mr. Dickson Mtogesewa learned advocate rendered service for the respondent. The petition was argued orally.

Supporting the petition, learned advocate for the petitioner argued that, the order establishing one stop judicial centre of Temeke is provided for under section 3 of the Judicature and Application of Laws Act, Cap



358. He submitted that the jurisdiction is given to the matter which originates from Dar es Salaam region. However, he added that law establishing one stop judicial centre must be read together with High Court Registries Rules of 2022 (*the Rules*).

Further, he contended that the Rules are the one which gives jurisdiction to the High courts, Dar es Salam and Coast Region. Also, he firmly stated that, since Coast Region does not have High Court Registry it is his view that courts are bound by zones and not Region therefore, High court which is in Dar es Salaam has the power to hear cases which originated from coast region including Bagamoyo, Mafia and Mkuranga.

Additionally, he stated that even in form No. 3, the parties were addressed to go to One stop judicial centre. Hence, it is the learned advocate's view that this court has jurisdiction to entertain the application and its main case.

Disputing the application, it was learned advocate Mtogesewa who argued that it was wrong for the parties to be referred to this court by the marriage conciliation board since the same does not confer jurisdiction to the court. He added that Form No 3 (annexure TAL5) came from Ilala District while parties resides in Bagamoyo.

Submitting on jurisdiction, the learned advocate contended that rule 2 of GN No. 640 of 2021 referred to matrimonial and probate causes

arising from Dar es Salaam Region and not Coast Region with the aim of speedy delivering of justice.

Moreover, he stated that the High Court Registries Rules of 2022 did not amend GN No. 640/2021 and it has no effect on the same since it is specific for probate and matrimonial matters.

In addition, the learned advocate reasoned in view of section 18 (1)(a)(i) of Magistrates' Courts Act [Cap 11 R.E 2019] that applicant ought to have referred their matrimonial dispute at Bagamoyo primary court. It was the learned counsel's submission that this court has no territorial jurisdiction on the matter.

In rejoining, learned advocate reiterates what he had mainly submitted in chief.

Having heard the parties and examine the records, the only issue for consideration and determination is whether this court has jurisdiction to entertain this petition pending before this court.

To begin with, I see a need to point out facts which are not in dispute. It is not in dispute that parties lived in Bagamoyo, although petitioner in para 1.0 of her petition stated that she lives and work for gain in Bagamoyo and Dar es Salaam. It is also undisputed that at the time of filing this petition parties lived in Bagamoyo, therefore, in other words, I can say the cause of action (matrimonial dispute) arose in

Bagamoyo. And according to s. 18 of the Civil Procedure Code, Cap 33 R.E 2019 place of suing has to be where defendant resides.

Now, the question to be determined is whether this court has power over matters which emanate from Coast Region. It is settled that, the establishment of One Stop Judicial Centre of Temeke was done according to section 4A (1) of the Judicature and Application of Laws Act, [Cap 358 R.E 2019] which gives the Chief Justice power to establish divisions and registries of the high court, hence through GN No. 640/2021, the Judicature and Application of Laws (One – Stop Judicial Centre of Temeke) (Establishment) Order, 2021 under order 2 this court was established. For ease of reference the same is hereunder reproduced;

*"There is hereby established the One – Stop Judicial Centre of Temeke at Temeke High Court Sub- Registry for the purpose of speedy and effective trial of probate and administration causes and matrimonial matters **originating from Dar es Salaam Region**.
(emphasis is mine on the bolded words)"*

Considering the foregoing provision, it is categorical that this court was established specifically for probate and matrimonial matters originating from Dar es Salaam Region, aiming at expediting its adjudication. [see the cases of **National Bank of Commerce Limited vs National Chicks Corporation Limited & 4 Others**, Civil Appeal No. 129/2015 CAT at Dar es Salaam and **Jacob Joshua Okuku vs Elly Ezekiel Joshua**, Civil Reference No. 25/2023 HCT at Dar es Salaam].



As vividly stated above, the question to be asked is whether this petition being a matter originating from Bagamoyo (Coast Region) can be filed and entertained in this court. I am of the firm view that, the answer to this question is in negative due to what I have stated hereinabove that this petition did not originate in Dar es Salaam Region where this court has territorial jurisdiction in matrimonial matters.

However, I could agree with the learned advocate for the petitioner that High Court Registries Rules of 2005, GN No.96/2005 (*the Rules*) under item 1 to the schedule which has to be read together with rule 5 of the Rules, provides for district registry in Dar es Salaam, Coast Region and Morogoro as addition to the registry. Though, it is true that in Coast Region where Bagamoyo is situated there is no High court, but what I do not agree with him is the argument by the learned advocate for the petitioner that since this court (Temeke High Court Sub – Registry) is established in Dar es Salaam, it has jurisdiction over Coast Region. It is my humble view that, this reasoning by Mr. Nachipyango is misleading.

Going by the learned advocate's reasoning I can dare to say that the appropriate registry where the petitioner ought to have filed her petition is the High Court (Dar es Salaam District Registry). The reason is, the basis of this court's (Temeke High Court sub - Registry) jurisdiction, apart from the nature of the cases which could be adjudicated, is the designated area of which this court is premised, which is Dar es Salaam

Region. It follows therefore that territorial jurisdiction of this court is expressly provided under the law, which is limited to matters originating from Dar es Salaam Region.

Thus, having this petition being originated from Bagamoyo which is in Coast Region cannot be entertained in this court. Consequently, I join hands with Mr Mtogesewa learned advocate for the respondent that this court has no territorial jurisdiction to entertain this petition.

Before I rest my pen, I must say, learned advocate for the respondent was right when he argued that applicant could have filed her petition at Bagamoyo Primary Court. I accord with this argument due to the settled rule that the High Court and subordinate courts are vested with original jurisdiction over matrimonial proceedings. This is provided under section 76 of the Law of Marriage Act, [Cap 29 R.E 2019]. And, it is preferable for every suit to be instituted in the court of the lowest grade competent to try it, the same is provided under section 13 of the Civil Procedure Code, [Cap 33 R.E 2019]. It is therefore my view that, petitioner could have instituted her petition at the primary court or district court in Bagamoyo. However, if she wishes, she may file her matrimonial dispute to the High Court which is Dar es Salaam District Registry. This is because the above-named provision of the law that is section 76 of the Law of Marriage Act, [Cap 29 R.E 2019] gives concurrent jurisdiction to



Primary Couer, District Court and High Court in hearing and determining matrimonial proceedings.

That being said, I hold that this court has no jurisdiction to entertain this petition and therefore the same are incompetent before this court. And, they are hereby struck out from this registry to allow the petitioner to file the same in the appropriate court or registry. I make no orders as to costs since parties are spouses.




M.MNYUKWA

JUDGE

05/02/2024

Court: Ruling delivered on 5th February 2024 in the presence of the parties' counsel.


M.MNYUKWA

JUDGE

05/02/2024