

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(MOROGORO SUB-REGISTRY)**

AT MOROGORO

(PC) MATRIMONIAL APPEAL NO. 11 OF 2023

(Arising from the Decision of the District Court Court of Kilombero, at Ifakara in Matrimonial Appeal No. 34 of 2022; Originating from Execution Proceedings or Order at Mkamba Primary Court in Matrimonial Cause No. 10 of 2020)

SALVINA SELESTINE LIGAMBASIAPPELLANT

VERSUS

FAUSTINE FAUSTINE MAHIMBO RESPONDENT

JUDGMENT

29th Sept, & 21st Febr, 2024

M.J. CHABA. J.

This second appeal has had a chequered history. It stemmed from the decision of the Primary Court at Mkamba (the trial Court) in Matrimonial Cause No. 10 of 2020 delivered on 3rd day of November, 2022. However, it is hard to find that the matter at hand is shrouded by such a chequered history until the background of the matter is unveiled.

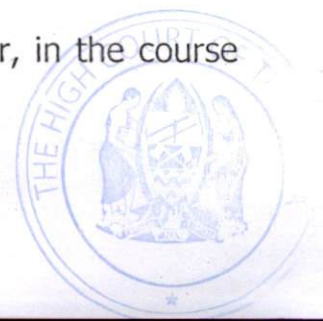
For a better appreciation of the issues raised herein, I find it apposite to explore the background of the matter and the factual setting giving rise to this second appeal. It goes like this: On 23rd day of October, 2020, the respondent herein, FAUSTINE FAUSTINE MAHIMBO successfully petitioned to the Primary Court at Mkamba for divorce and division of matrimonial properties via



Matrimonial Cause No. 10 of 2020 against the appellant herein, SALVINA SELESTINE LIGAMBASI.

Discontented by the orders touching the division of matrimonial properties, the appellant herein (SALVINA) successfully appealed to the District Court of Kilombero, at Ifakara (first Appellate Court) via Civil Appeal No. 22 of 2020 (Hon. Khamsini, SRM) which quenched the appellant's thirsty after it ordered for re-distribution of matrimonial properties to the effect that the appellant (SALVINA) should get one house unlike the trial Court's order which distributed both houses to the respondent (FAUSTINE). However, the respondent (FAUSTINE) was not amused. He appealed to this Court at Dar Es Salaam Registry via PC Matrimonial Appeal No. 108 of 2021 but the same ended up struck out for being filed out of time. After that decision, the respondent was restless. Therefore, he lodged in this Court Misc. Application No. 5 of 2022 seeking for extension of time to appeal out of time. As the records speaks, the said application found its way to my chambers. Being a trial Judge, I had an opportunity to handle the matter on merits, and on the 31st day of March, 2022, I dismissed the matter for want of merits, and the game was over.

My decision in Misc. Application No. 5 of 2022 paved the way for the appellant herein to go back to the trial Court for execution. As hinted above, she desired to get one of the houses as ordered by the District Court of Kilombero, at Ifakara in Civil Appeal No. 22 of 2020. However, in the course



she noticed that the District Court did not specify clearly which house between the two should belong to the respective party considering the fact that the parties owned two matrimonial houses situated at Sumbugulu Village and Ikungua Village.

For that reason, the appellant (SALVINA) lodged Civil Review No. 1 of 2022 before the first Appellate Court so that it could resolve the issue. However, the matter was dismissed. The appellant (SALVINA) had no other option other than knocking the door of the trial Court for execution of the decree issued and blessed by the first Appellate Court which distributed one of the houses to her. While before the trial Court, the appellant specifically prayed that she wanted to be given the house situated at Sumbugulu Village for a reason that the same is free from any encumbrance, unlike the other matrimonial house at Ikungua which was built within home place of the respondent, her ex-husband. It would appear that, the executing Court did not heed to her prayer because the Court proceeded to maintain that the respondent had to own a house at Sumbugulu Village and so as the appellant at Ikungua Village. This decision prompted the appellant to lodge a Matrimonial Appeal No. 34 of 2022 before the first Appellate Court (Hon. B.L. Saning'o, RM) which upheld the decision of the trial Court.

Still aggrieved, the appellant has now come to this Court armed with two grounds of appeal as follows: -



1. That, the first Appellate Court erred in law and fact to have dismissed the appeal and upheld the trial Court decision having relied upon extraneous matters.
2. That, the first Appellate Court misdirected itself in dismissing the appeal having failed to comprehend and appreciate the nature and scope of the Appellant's complaint and the circumstances of the case, thereby she occasioned failure of justice as far as matrimonial houses at Ikungua and Sumbugulu Villages are concerned.

At the hearing of the appeal, the appellant was represented by Mr. Bageni Elijah, Learned Advocate while the respondent enjoyed the legal services of Mr. Kassian Karsian Matungira, also Learned Advocate. With the parties' consensus, it was agreed that this appeal be argued and disposed of by way of written submissions. Both parties complied with the Court's scheduled order meanwhile submitting at lengthy.

On scrutiny of the Counsels' submissions, I noticed that nothing than the two matrimonial houses situated at Sumbugulu and Ikungua Villages have caused the parties to this case lock-horns. In particular, the battle is only over a house found in the Village called Sumbugulu which has been distributed to the respondent (FAUSTINE). Both the trial Court and the first Appellate Court concurrently awarded the house found at Sumbugulu Village to the respondent, yet the appellant's thirsty was and still is to possess and own the



same house for reasons to be apparent shortly in as much as the parties' submissions are concerned.

Arguing in support of the appellant's appeal, Mr. Bageni commenced to argue the appeal with the first ground. He submitted that, in the impugned judgment, the Magistrate (Hon. Saning'o, RM) in upholding the trial Court's decision stated that:

"...the respondent continues to reside at the house at Sumbugulu and that house at Sumbugulu has totally change since respondent made a lot of development and improvement to the said house, and the house is well modified..." (Page 5 of the typed proceedings)".

In view of the above excerpt of the impugned judgment, Mr. Bageni underlined that, the Magistrate went beyond what she was required to do. In as much as the first Appellate Court (Hon. Khamsini, RM) ordered the appellant to get one of the houses, the house at Sumbugulu was not excluded. He argues that, the alleged modifications and improvements effected on it, were absolutely irrelevant to be considered by the Magistrate and it is for that reason the Magistrate failed to appreciate the circumstances of the case and proceeded to rule out the way she did, and thereby denied the appellant's right over matrimonial properties.



On the second ground of appeal, Mr. Bageni averred that, to appreciate the gist of the complaint in the second ground, he reminded this Court to take into consideration the longstanding public policy principle that, litigation should come to an end. In this regard, he proceeded to remark that Courts of laws are there to facilitate settlement and resolution of disputes and not to create dispute and chaos to the parties. To substantiate his contention, Mr. Bageni stated that, parties herein were wife and husband and their union has been put asunder following issuance of a decree of divorce by the trial Court. He said, during their marriage they lived happily and jointly built a house at Ikungua Village, the home and ancestral land of the respondent. He told the court that, the house is within family land of respondent where his family members including his parents live until the appellant's submission was lodged in this Court.

It was Mr. Bageni's contention that, it is a common phenomenon for the husband and wife to develop residence or house at the home place of the head of a family (husband). Additionally, in their joint effort, the duo built another house in the Village called Sumbugulu. He contended further that, the appellant drew this point to the attention of the trial Court and elaborated that, Ikungua Village being within respondent's ancestral land in which his parents live to-date, would not be easily occupied happily by the appellant considering the broken relationship.



Mr. Bageni did appreciate the findings of the trial Magistrate that the first Appellate Court (Hon. Khamsini, SRM) did not specify which house among the two, the respective party should take and indeed did not know what to do in the circumstances. As a solution, Mr. Bageni opined that, the Magistrate was at perfect liberty to use his common sense, justice, equity and good conscience to further justice to avoid unnecessary legal battles like the present one. He referred this Court to the case of **Kobil Tanzania Limited Vs. Morian Kisangi and Another**, Commercial Application No. 12 of 2007 (unreported), where the Court of Appeal of Tanzania held:

"In a situation where there is no procedure to cater for a certain situation, the court is obliged to use its common sense, justice, equity and good conscience and resolve the problem before it to further the interests of justice....".

The Counsel argues that, conversely, the first Appellate Court (Hon. B.L. Saning'o, RM) in Matrimonial Cause No. 34 of 2022, instead of considering the supervening hardship the poor appellant had to suffer should the order to occupy the house at Ikungua Village could be maintained, she proceeded to rule out that:

".....taking into account there is no dispute both houses belong to them and they have all contributed in the acquisition... I find that the executing court was correct to



give the house of Ikungua to the appellant and the house of Sumbugulu to the respondent". (Page 7).

He underlined that, should the impugned judgment will be maintained, it is obvious that, the appellant's right to have the house at Ikungua Village is tantamount to denial of her rights or rather it is the right given by one hand and taken by another hand for obvious reason that, the appellant will not happily live in the house attached to his ex-husband's family land. He said, this state of affair seems to be created by the Lower Courts leading to chaos and unnecessary legal battles. He argues that, in this case justice would have manifestly and undoubtedly be seen to be done to the appellant if her wishes to have the house at Sumbugulu Village would have given weight and considered by the Lower Courts.

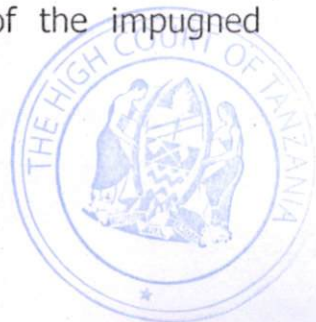
To wind up his submission, Mr. Bageni invited this Court to employ its wide revisionary powers to revise the decision of the first Appellate Court (Hon. Khamsini, SRM) in Civil Appeal No. 22 of 2020 and clear the doubts as to which house between the two should each party take.

In reply, Mr. Kassian Kassian Matungira, Counsel for the respondent, contended that generally speaking the appellant's submission has nothing and prayed the Court to dismiss the appeal with costs for a reason that the appellant is wasting the precious time of the Court.



Regarding the first ground, Mr. Matungira accentuated that the first Appellate Court (Hon. B.L. Saning'o, RM) was right to uphold the decision of the executing trial Court on the ground that, the appellant left her home family at Sumbugulu Village since 2020. He said, since there was no any application made by the appellant to estop or prohibit the respondent to improve and develop the matrimonial house at Sumbugulu Village, that is why he continued to improve, modify and develop the house taking into account that, the two Courts below ruled in his favour.

On the second ground, Mr. Matungira strongly contested it on the ground of lacking merits. He said, the decisions reached by the two Lower Courts are sound because the parties' efforts towards acquisition of their joint properties, in particular the two houses found in Sumbugulu and Ikungua Villages were fully considered. He insisted that, the decision made and reached by the first Appellate Court to the effect that, everyone should get one house was sound because the house at Ikungua Village was distributed to the appellant and the house at Sumbugulu Village was left in the hands and possession of respondent. It was his argument that, the fact that the house at Ikungua Village is built within the ancestral land of the respondent's family does not bar or prevent the appellant from enjoying the fruits of her joint efforts. He said, the decision of the first Appellate Court (Hon. B.L. Saning'o, RM) was proper and sound. He quoted and recited an excerpt of the impugned

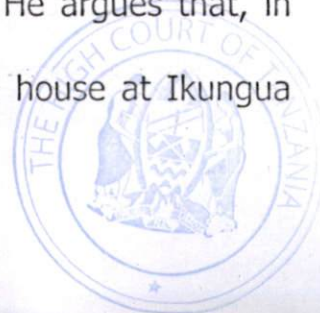


judgment as indicated hereinabove at page seven (7), second paragraph from the bottom.

Concerning the case of **Kobil Tanzania Limited Vs. Morian Kisangi and Another**, (supra) cited by the Counsel for the appellant, Mr. Matungira submitted that the same is irrelevant in this case. He stressed that, since the appellant deserted herself from the matrimonial house in the Village of Sumbugulu with a number of household items and without consent of her husband (respondent), and considering the fact that respondent continued to maintain, improve, modify and develop the house at Sumbugulu Village, it is obvious that, his contribution is greater than contribution made by the appellant during substance of their marriage.

He concluded by urging the Court to dismiss the appeal with costs and uphold the decision and order of the executing Court. He maintained that, the house at Sumbugulu Village should remain in the hands of respondent for reasons stated above.

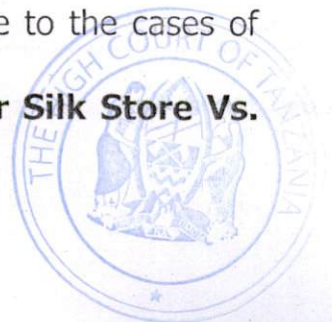
By way of rejoinder, Mr. Bageni reiterated his submission in chief and insisted that, the allegedly assertion that, the respondent made considerable improvements over the house at Sumbugulu Village is irrelevant and without evidential support from the records. He said, the crucial issue to be resolved by this Court is whether or not the appellant's complaint that, she has been denied her right over the matrimonial property is sound. He argues that, in the circumstance of this case, the appellant cannot get a house at Ikungua



Village which is attached to the compound of the family members of her ex-husband while the two have no good relationship. According to him, the intervention of the Court is inevitable to further justice, considering special circumstances he highlighted in chief.

I have dispassionately considered the rival submissions advanced by the Counsels for both parties in line with the grounds of appeal. Also, I have had ample time to read and thoroughly examined the lower Courts records, that is; Shauri la Talaka / Matrimonial Cause No. 10 of 2020 filed before the trial Court and delivered on 13th November, 2020; Civil Appeal No. 22 of 2020 filed in the first Appellate Court (Hon. L.O. Khamsini, SRM) and delivered on 15th April, 2021; Civil Review No. 1 of 2022 (Hon. Khamsini, SRM) filed before the first Appellate Court so that could resolve the issue, but ended in vain as it was dismissed by the Court; Execution Order issued by the trial Court in Matrimonial Cause No. 10 of 2020 delivered on 3rd October, 2022 and Matrimonial Appeal No. 34 of 2022 dealt by the first Appellate Court (Hon. Saning'o, RM).

Having in mind that this is second appeal, I find it apt to restate the principle that, the second Appellate Court should ordinarily be very cautious before varying the concurrent decisions of the Lower Courts. This principle was enunciated in the case of **Helmina Nyoni Vs. Yeremia Magoti**, Civil Appeal No. 61 of 2020 (unreported), while making reference to the cases of **Amratial Damodar Maltaser and Another t/a Zanzibar Silk Store Vs.**



A.H. Jariwala t/a Zanzibar Hotel [1980] TLR 31 and **Neli Manase Foya Vs. Damian Milinga [2005] TLR 167** as cited in the case of **Martin Kikombe Vs. Emmanuel Kunyumba**, Civil Appeal No. 201 of 2017 (unreported), wherein the Court of Appeal of Tanzania observed that:

"It is trite law that the second appellate court(s) should be reluctant to interfere with the concurrent findings of two courts below except in cases where it is obvious that the findings are based on misdirection or misapprehension of evidence or violation of some principle of law or procedure or have occasioned a miscarriage of justice".

Corresponding observations were made in the cases of **Bomu Mohamed Vs. Hamisi Amiri (Civil Appeal 99 of 2018) [2020] TZCA 29 (27 February 2020)** and **Paul August Vs. Daniel Moshi (Consolidated PC Civil Appeals 32 of 2022) [2023] TZHC 17473 (3 Mei 2023)** (extracted from www.tanzlii.go.tz). For instance, in the case of **Bomu Mohamed Vs. Hamisi Amiri** (supra), the Court of Appeal of Tanzania held:

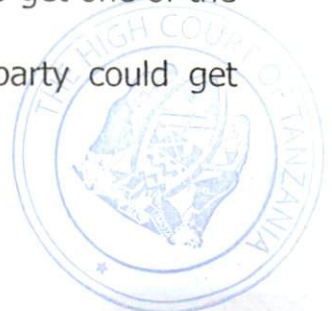
"We are very alive to a well-established rule of practice that on a second appeal, the Court will not normally interfere with a concurrent finding of fact of courts below unless there are sufficient grounds to do so. These grounds will be things like misdirection, non-directions or misapprehension of the evidence.



Upon highlighting the legal principles governing second appeals, the pertinent issue for consideration, determination and decision thereon is whether the appellant's complaint that, its her right to acquire a matrimonial property, a house found in the Village of Sumbugulu has merit. In other words, the question to resolve is whether the concurrent findings of the two Courts below are correct.

Guided by the authorities cited hereinabove, I will therefore consider both the lower Courts records and the parties' rival submissions in a bid to ascertain whether or not there are misdirection, non-directions or misapprehension of the evidence tendered at trial Court and afterwards re-evaluated or re-assessed by way of appeal by the first Appellate Court.

As gleaned from the records, the trial Resident Magistrate at Mkamba Primary Court within the District Court of Kilombero, at Ifakara did award the respondent (FAUSTINE) both two houses located at Sumbugulu Village and Ikungua Village via Matrimonial Cause No. 10 of 2020, delivered on 13th November, 2020. Again, it is on record that, on appeal to the District Court of Kilombero, at Ifakara via Civil Appeal No. 22 of 2020, delivered on 15th April, 2021, the first Appellate Court allowed the appellant's appeal (SALVINA) by varying the decision of the trial Court on aspect of division of the matrimonial properties between the parties and ordered re-distribution of the two houses. In particular, the Court ruled that, the appellant was entitled to get one of the matrimonial houses, though did not exactly specify which party could get



which house. Part of the relevant decision made by the first Appellate Court (Hon. Khamsini, SRM) in Civil Appeal No. 22 of 2020 can be garnered from her judgment at page 5 of 6 of the typed copy of judgment, in particular, 2nd and 3rd paragraphs. For ease of reference, it reads:

".....On a point of division of matrimonial properties, I do fault the trial Magistrate, since this should not be taken as a cause of awarding little share on party of the respondent.....The respondent **(Sic) (Appellant, SALVINA)** should get one house, a motorcycle and all the house hold items that she went away with, while the appellant **(Sic) (Respondent, FAUSTINE)** is to get the remaining house, a plot at Nyandeo and others at Sumbugulu. Regarding all these properties, the appellant has all been unable to show how the same do not fall within the ambit of matrimonial properties.....".

[Emphasis is Added].

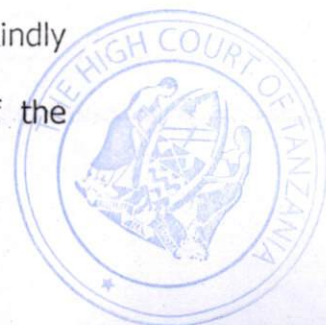
From the foregoing decision of the first Appellate Court (Hon. L.O. Khamsini, SRM), it is apparent on records that the appellant was SALVINA SELESTINI LIGAMBASI and the respondent was FAUSTINE FAUSTINE MAHIMBO. On scrutiny of the above excerpt of decision of the first Appellate Court, it is clear that, the wording therein was shrouded by a lot confusion



and ambiguities, as a result, the parties also were left at the crossroads confused and without knowing exactly what to do.

As shown above, **the purported respondent** in actual sense is the **appellant, SALVINA** who according to the first Appellate Court had to get one house (unspecified), a motorcycle and all household utensils that she made away, while **the purported appellant** in actual sense is the **respondent, FAUSTINE** whose share was mentioned to be the remaining house, a plot at Nyandeo and others at Sumbugulu. Above all, the Court underlined that, **regarding all these properties, the appellant (SALVINA) has all been unable to show how the same do not fall within the ambit of matrimonial properties**, which in my understanding, this statement is full of confusion and tantamount to misdirection. As evidenced from the records, this serious misdirection was never rectified either by way of appeal or review. It should be noted / recalled that, when her appeal via Civil Appeal No. 22 of 2020 hit the rock, she also tried as much as she could to exhaust all available remedies by filling a Civil Review No. 1 of 2022, but still her efforts ended in vain. Again, at pages 5 of 6 of the typed judgment, 4th paragraph, upon making its own deliberation, the first Appellate Court proceeded to allow the appeal by stating as follows:

".....I allow the appeal on point of division of matrimonial properties; this corrects the irregularities that will kindly benefit **the respondent**. In that regard, instead of the



Appellant getting both houses, he should get a single house, a plot at Nyandeo and others at Sumbugulu while the **respondent should also get a single house, motorcycle and all the houses hold items she left with previously.....".** [Bold is mine]

From the above excerpt of the Judgment of the first Appellate Court, the Court once again made a dubious decision upon stating that, **instead of the appellant (SALVINA) getting both houses, he (Sic) should get a single house, a plot at Nyandeo and others at Sumbugulu while the respondent should also get a single house, motorcycle and all the houses hold items she left with previously (Sic).** With this finding of the first Appellate Court, it is vividly apparent that, these misdirection and misapprehension of the orders issued by the first Appellate Court upon considering the matter on appellate stage by way of re-evaluating and re-assessed the entire evidences tendered before the trial Court, grossly occasioned miscarriage of justice as the decree in appeal was improper and unenforceable one. For ease of reference and better understanding, I find it appropriate to demonstrate how the document was prepared by first Appellate Court and issued to the parties herein. It depicts as follows:

"DECREE ON APPEAL

WHEREFORE, the Appellant prays for judgment and decree against the Respondent as follows: -



1. That, the appeal be allowed.
2. The whole decision of Primary Court be nullified and quashed.
3. Any other orders and reliefs as the honorable court may deem fit.

This Case has come on this 15th April, 2021 for appeal Judgment before Hon. L.O. Khamsini, SRM in presence of both parties.

THE COURT DOTH HEREBY BY ORDER THAT: (Sic)

1. The Appeal is allowed.
2. Properties be re-distributed to the extent that each of them should acquire one house while the order as to other properties should remain.
3. Each party bear its own costs of the appeal”.

As shown above, One; A Decree on Appeal cannot be enforceable as the same stemmed from the decision / judgment which is without specific and clear orders, hence improper and un-executable one, Two; The Judgment and Decree in Appeal did not direct the trial Court to re-hear the parties on the acquired joint matrimonial properties and necessitate a just and fair re-distribution, Three; The first Appellate Court did not make an order remitting the original case file to the trial Court.

In my considered view, the first Appellate Court was required to give clear directions to the trial Court, including to re-hear the evidence of each party on contribution towards acquisition of the matrimonial houses, refraining from adjudging that each party / one should receive one house in absence of the ascertained extent of contributions made by each of the party. By so doing, the first Appellate Court clearly pre-empted what the trial Court was



supposed to do. Further, I am of the settled view that, the Decree in Appeal issued by the first Appellate Court in Civil Appeal No. 22 of 2020 was supposed to direct the trial Court to the effect that, upon hearing both parties in respect of the extent of contributions made by each party, the task of the trial Court was to recompose a new judgment, adding the portion of division of the matrimonial properties and forward the same before the first Appellate Court for consideration and determination.

In other words, the District Court of Kilombero, at Ifakara being the first Appellate Court had an opportunity to re-evaluate or re-assess the evidences on record as to the extent of the parties' contributions towards acquisition of matrimonial properties and proceed to divide accordingly without ordering re-division before the trial Court. In the case of **Yesse Mrisho vs Sania Abdul (Civil Appeal 147 of 2016) [2019] TZCA 414 (7 November 2019)** (extracted from www.tanzlii.go.tz), the Court of Appeal of Tanzania observed that: -

".....it is clear that, proof of marriage is not the only factor for consideration in determining contribution to acquisition of matrimonial assets as propounded by the second appellate court. There is no doubt that a court, when determining such contribution must also scrutinize the contribution or efforts of each party to the marriage in acquisition of matrimonial assets.....".



In another case of **Adelina Koku Anifa & Another vs Byarugaba Alex (Civil Appeal 46 of 2019) [2019] TZCA 416 (4 December 2019)**, the CAT held:

"It is certain therefore, that where the lower court may have not observed the demands of any particular provision of law in a case, the Court cannot justifiably close its eyes on such glaring illegality because it has duty to ensure proper application of the laws by the subordinate courts and/or tribunals".

Similarly, in the case of **Marwa Mahende Vs. Republic [1998] TLR 249**, the CAT stated that: -

"We think the duty of the Court is to apply and interpret the laws of the country. The superior courts have the additional duty of ensuring proper application of the laws by the courts below".

Guided by the above binding authorities and considering the fact that my scrutiny on the entire records revealed anomalies to the effect that, the first Appellate Court in Civil Appeal No. 22 of 2020 misdirected the parties and poorly apprehended their evidences adduced at the trial Court in Matrimonial Cause No. 10 of 2020 which resulted to Execution Proceedings or Order issued by the trial Court in Matrimonial Cause No. 10 of 2020 and its appeal



through Matrimonial Appeal No. 34 of 2022, it follows therefore that, the subsequent ruling in execution proceedings and Matrimonial Appeal case No. 34 of 2022 respectively, are nullity as they sprang from a wrong Judgment and Decree in Civil Appeal No. 22 of 2020, hence there is no competent appeal before this Court.

In view of what I have endeavoured to profoundly deliberate hereinabove, I am at one with Mr. Bageni's proposition that this is a fit case for invoking my supervisory and revisional powers as envisaged under Section 44 (1) (b) of Magistrate's Courts Act [CAP. 11 R.E. 2019] (the MCA) and Section 79 (3) (a) of the Civil Procedure Code [CAP. 33 R.E. 2019] (the CPC) to cure the irregularities noticed in the lower Courts records. For clarity and better understanding of the provisions of the law, section 44 (1) (b) of the MCA provides that: -

"In addition to any other powers in that behalf conferred upon the High Court, the High Court may, in any proceedings of a civil nature determined in a district court or a court of a resident magistrate on application being made in that behalf by any party or of its own motion, if it appears that there has been an error material to the merits of the case involving injustice, revise the proceedings and make such decision or order therein as it sees fit".

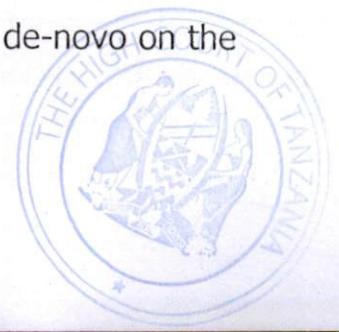


On the other hand, section 79 (3) of the CPC articulates that:

"Nothing in this section shall be construed as limiting the High Court's power to exercise revisional jurisdiction under the Magistrates' Courts Act".

Applying the above guiding provisions of the law in respect of the way forward upon noticing the irregularities committed by the first Appellate Court, it is my holding that the decision made by the District Court of Kilombero, at Ifakara in Civil Appeal Case No. 22 of 2020 delivered on 15th April, 2021 is null and void. I therefore proceed to quash the entire proceedings in Civil Appeal Case No. 22 of 2020 and set aside the Judgment, Decree and any other Orders that emanated therefrom. To ensure that justice is manifestly seen to be done, I have also decided to nullify and expunge from the record all proceedings relating to division of matrimonial assets stemming from Matrimonial Cause No. 10 of 2020 delivered on 3rd October, 2022 for obvious reason that, the trial Court failed to determine the issue of division of matrimonial assets perfectly and fairly which resulted to this second appeal. I also order and direct the trial Court conduct fresh proceedings on this facet and thorough scrutinize the contributions or efforts made by each party to the marriage in acquisition of matrimonial properties.

In the final event, I allow the appeal to the extent of my observations. Execution proceedings at Mkamba Primary Court shall be tried de-novo on the



aspect of division of matrimonial properties by a different Resident Magistrate having competent jurisdiction to entertain the matter. Other Orders issued by the trial Court via Shauri la Talaka / Matrimonial Cause No. 10 of 2020 shall remain constant and undisturbed unless challenged by way of appeal to the District Court of Kilombero, at Ifakara. The trial Court shall complete the hearing of Execution Proceedings on aspect of division of matrimonial assets and compose a reasoned ruling within sixty (60) days from the date of this Judgment. Each party shall bear its own costs.

It is so ordered.

DATED at MOROGORO this 21st day of February, 2024.



M. J. Chaba

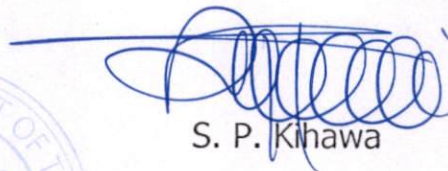
JUDGE

21/02/2024

Court:

Judgement delivered in this 21st day of February, 2024 in the presence of the Appellant and Respondent who both appeared in person and unrepresented through Video Conference facility linked from the District Court of Kilombero, at Ifakara.



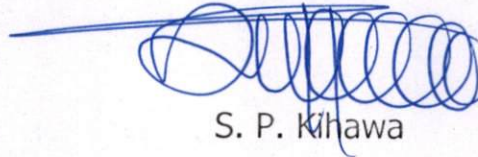

S. P. Kihawa

DEPUTY REGISTRAR

21/02/2024

Court:

Rights of the parties to appeal to the CAT fully explained.


S. P. Kihawa



DEPUTY REGISTRAR

21/02/2024