

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

DAR ES SALAAM SUB- REGISTRY

MISC. CIVIL APPLICATION NO 468 OF 2023

(Arising from Civil Appeal No. 324 of 2021 of the High Court of Tanzania Dar es salaam Sub Registry)

SAMWELI MUHOJA LUMALA APPLICANT

VERSUS

MARYLINE AMANIEL MINJA..... RESPONDENT

RULING

Date of last Order:30-11-2023

Date of Ruling:26-2-2024

B.K.PHILLIP,J

This application is made under section 14 (1) of the Law of Limitation Act, supported by an affidavit sworn by the applicant. The applicant prays for the following orders;

- i) That this Honourable Court be pleased to grant extension of time within which to file application for certificate on point of law against the decision of the High Court of Tanzania for purpose of appeal in Civil Appeal No.324 of 2021 dated 15th August 2022, by Hon. Mruma ,J.
- ii) Costs be provided for.
- iii) Any other relief(s) this honourable Court may deem fit to grant.

The application is contested. The respondent filed a counter affidavit in opposition to the application. A brief background to this application is that the applicant and respondent were a couple.They celebrated their Christian

marriage on 9th December 2000. They were blessed with four (4) issues. In 2013 misunderstanding between them cropped up. Efforts to bring harmony between them were made but bore no fruits. Consequently, in 2019, the respondent herein lodged a petition for divorce at the District Court of Mkuranga at Mkuranga whose judgment was delivered on 9th July 2021 in which their marriage was declared irreparably broken and the matrimonial properties were divided among them by the court. Aggrieved by the judgment of the District Court aforesaid, the applicant herein appealed to this court vide Civil Appeal No.324 of 2021, whose judgment was delivered on 15th August 2022 in which this court dismissed the appeal save for the variations ordered in respect of the distributions of two houses. Dissatisfied with the judgement of this court aforesaid, the applicant lodged his notice of appeal to the Court of Appeal on 8th September 2022 and on 31st August lodged this application.

In this application all parties appeared in person, unrepresented. This application has been disposed of by way of written submissions. Submitting in support of the application, the applicant started his submission by adopting the contents of the affidavit in support of the application. He went on to argue that the impugned judgment is tainted with illegality on the reason that its validity is questionable for lack of factual analysis and the bases for the orders made therein. He contended that existence of illegality in the impugned judgement is sufficient reason for granting extension of time. To cement his arguments he cited the case of **The Principal Secretary Ministry of Defence and National Services Vs Devran Valambhia (1992) T.L.R 185** and **TanESCO Vs Mafungo Leonard Majura and 15**

others, Civil Application No.94 of 2016 (unreported).He prayed this application to be allowed.

The reply submission for the respondent was prepared by the learned advocates from Legal and Human Rights Center ('LHRC") in which it was submitted that the applicant did not account for the days of delay and relied on the ground of illegality only. The illegality alleged by the applicant has not been pointed out to move this court to grant this application.

Moreover, Advocates from LHRC submitted that even if this court would decide to grant this application, the same is misconceived since this matter does not originate from the primary Court. Also, this being a matrimonial matter, having certificate on point of law is not a requirement for filing appeals at the Court of Appeal of Tanzania. To support their arguments they referred me to section 80(4) of the Law of Marriage Act which provides as follows;

"80(4) 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."

Further, the learned advocates from LHRC, cited the case of **Modesta Namkunga Vs Francis Joseph Mushi, Misc. Civil Application No. 7 of 2020**, (unreported) in which this court held as follows;

".. Therefore , the applicant can directly appeal to the Court of Appeal without having obtained the certificate on point of law on any ground being of law or mixed law and facts"

In rejoinder, the applicant reiterated his submission in chief and did not address the legal issue raised by the learned Advocates from LHRC on whether or not there is a legal requirement for obtaining certificate on point of law for one to appeal to the Court of Appeal to challenge the judgment of this court on matrimonial matter originating from the District Court.

Having analyzed the submissions made by the parties, let me embark on the determination of the merit of this application. I will start with the legal issue raised by learned Advocates from LHRC on the propriety of this application . As correctly argued by the Advocates from LHRC, pursuant to the provision of section 80 (4) of the Law of Marriage Act, there is no legal requirement for obtaining a certificate on point of law to appeal to the Court of Appeal to challenge the decision of this court on Matrimonial matters originating from the lower courts.

In the upshot, this application is misconceived. Thus, the same is hereby struck out . Since the respondent received legal aid from LHRC, I do not give any order as to costs.

Dated this 26th day of February 2024




B.K. PHILLIP
JUDGE