

TANZANIA / JUDGMENT

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA TEMEKE SUB - REGISTRY AT ONE STOP JUDICIAL CENTRE PC. CIVIL APPEAL NO. 24424 OF 2024 (Arising from Matrimonial appeal no 76/2023 decided by the District Court of Terr, eke at Temeke- Hon. M. Sanga RM and Matrimonial case no 546/2022 decided by Temeke Primary Court at Temeke, Hon A.J Mwainyekuie) BETWEEN MARIAM WILLIAM MWASAWALA..... APPELLANT
VERSUS RAMADHANI RASHID MKELEHE..... RESPONDENT

RULING

Date of last order: 3/12/ 2024 Date of Ruling: 30/12/2024 S.D. MWAIPOPO J, This is a ruling in respect of the issue which was raised by the court suo motu on the competence of the Appeal. On the 3rd of December 2024, in the course of composing the Judgement this court observed that according to the record available, the appeal before this court had already been struck out by Hon Gladys Barthy J on the 30th September 2024 and had been reinstituted before it was later on dismissed by Hon Sarwat J on the 11th of November 2024. Both orders are contained in the e-Case Management System. Based on the existence of the High Court dismissal order by Hon. Sa'wat J, I proceeded to order both parties to address the court on the competence of the Appeal. The hearing of the issue raised by the court proceeded by way of written submissions pursuant to the timetable drawn by the court. Both parties were represented and or received legal assistance. Arguing in support of the competence of the appeal, the Appellant contended that: after being aggrieved by the decision of the district court she filed an appeal before the High court which was assigned before Hon. Gladys Barthy J. and the same was registered as civil appeal no. 24128/2024. That on the 27th of September 2024 it came to the attention of the Hon Judge Barthy that the appeal was wrongly filed as a Civil appeal instead of a PC Civil Appeal. On 30th September 2024, the Appellant thus prayed to withdraw the same upon exemption of fees so that she could rectify the error within 14 days. The Appellant further submitted that she filed the appeal within 14 days which was assigned before me and parties appeared on the 10th of October 2024 whereby an order for filing written submissions was granted and the Judgement was set for delivery on 22nd November 2024. After appearing for judgement, the matter was adjourned to 26th November 2024 whereby parties appeared in court and were informed that the matter had already been dismissed before Hon. Sarwat J on 11/11/2024. They were thus availed with a copy of the said order afterwards. The Appellant contended that his appeal was before two separate Judges without her knowledge and it was assigned two separate numbers, this one being registered as

PC Civil Appeal no 24424/2024 and another one Civil Appeal no. 21431/2024. She contended that the error was caused by the admission officer and the e-filing system and that she is not the one to blame. She thus prayed for the court to invoke the overriding objective principle and proceed with determination and delivery of the Judgement. Submitting in rebuttal, i.e. against the competence of the appeal, the Respondent contended that this is an issue that should not detain the court for a long time since based on the jurisprudence contained in our legal system, it is quite clear that when the matter is dismissed in the court of law, the same cannot be filed again in the same court. He argued that; the matter comes to an end. In support of position, he cited the case of Amina James Mwidunda versus Bituro Constantine Mazigo PC Matrimonial Appeal No. 30 of 2021, High Court (Mwanza Sub- Registry), whereby Dyansobera, J on page 3 of the ruling observed that; "This implies that when a case is dismissed, there is no right to reinstate it in the future. This is another term in legal parlance that the case is closed and cannot be re-opened." The Respondent submitted that the matter at hand was dismissed by hon. Sarwat kazi J and yet the Appellant filed another appeal before hon. Mwaipopo J. He contended that this is not proper as it is not a judicial procedure and it amounts to an abuse of court process. He argued that when the matter is dismissed, there is no avenue to file another case as it was elaborated in the above cited case. He finally concluded his submissions by praying for the appeal to be dismissed with costs. Having heard the submissions of the parties, the central issue to be resolved is whether this appeal is competent considering the existence of the order of dismissal of the same appeal by the same High Court. In determining this issue, I have perused the records contained in the e-cms regarding this appeal and observed that the Appellant filed this appeal on 1/10/ 2024 which was assigned for determination before me. The same proceeded for determination until it was initially fixed for delivery of Judgement on 22/11/2024. However, in the course of composing the Judgement, I came across records in the e-cms that the Appellant initially filed a similar appeal on 26/9/2024 with similar substance/contents and parties, bearing registration no 24128/2024 which was assigned before Hon. Barthy J. Contrary to the Appellants submissions, the same was struck out by Hon. Barthy J and leave to refile the same was granted within 14 days. Similarly, at the same time the same matter with a different number proceeded before Hon Sarwat J and on 11/11/2024, the Hon Judge dismissed the said appeal bearing similar parties and contents like the one at hand which was also proceeding before me having been filed on 1/10/2024. Therefore, in order to address this situation, I ordered parties to address the court on the competence of this appeal considering that there is already a dismissal order dated 11/11/2024 by the High Court Judge on this similar appeal. In the course of composing this Ruling, I have had time to peruse the submissions by both parties. The Appellant on her part has emphasized that her appeal is competent before this court and that it was assigned before different Judges and dismissed without her knowledge. That she only came to know about the dismissal order by Hon Sarwat J on 26/11/2024 after she was also availed with the said order afterwards. She contended that whatever happened has to be attributed to the admission officer and the e-filing system. She thus urged this court to proceed with determination of the matter and the delivery of Judgement. Having gone through the submissions of both parties and analyzed them herein above, I am of the settled position that this court is not only a court of law but also a court of record and that when Judges make decisions they create precedents for future reference. It is very clear that the

Appellant's appeal after being dismissed by the High Court (Sarwat J), on 11/11/2024, it rendered this court redundant to attend the same appeal or rather this court's hands were tied up to deal with the same. That means that even the orders granted by me from 11/11/2024 were being granted contrary to the order issued on 11/11/2024. Therefore, the argument by the Appellant that the court should proceed to deliver its judgement cannot hold water in this regard. Once an anomaly is discovered it must be addressed by the court upon affording both parties the right to be heard as it was done in this case. And that is the only way in which integrity and decency of proceedings of the High Court can be safeguarded and references to precedents will be meaningful. The Respondent in his submissions referred to the case of Amina James Mwidunda versus Bituro Constantine Mazigo PC Matrimonial Appeal No. 30 of 2021, High Court (Mwanza Sub- Registry), to drive point home that; when a case is dismissed, there is no right to reinstate it in the future. I entirely agree with the Respondent that once the appeal was dismissed by Hon. Sarwat Kazi J on 11/11/2024 the Appellant was not supposed to refile another appeal and even if it had been in existence before due to registration errors, it cannot stand in a situation where there is a dismissal order of the similar appeal. Two wrongs do not make a right. This cannot be proper as it is not a judicial procedure as suggested by the Respondent and it would amount to an abuse of court process. Similarly, once the same case is dismissed by the Judge of the High Court, the same High Court through another Judge lacks jurisdiction to entertain another appeal of similar nature. Proceeding with this appeal while there is knowledge of the existence of the dismissal order will be contrary to the procedures and the principle of the hierarchy of courts and a mockery to justice as well considering the fact that there are two parties in this case. Further, the dismissal order of the appeal cannot be circumvented by way of filing an appeal or proceeding with another similar appeal. The Appellant should instead resort to an appropriate remedy known in law in order to keep the appeal back in track. Lastly, the Appellant implored the court to invoke the principle of overriding objective. However, much as I would wish to do that, I am alive to the fact that while the said principle is vehicle for the attainment of substantive justice, it cannot be used in a situation where there has to be compliance with the law. See the case of Mondorosi Village Council and others Vs TBL and others Civil appeal no 66 of 2017 (unreported). Further in the case of Juma Busiya Vs Zonal Manager South Tanzania Postal Corporation Civil Appeal 273/2020/2021; it was held that; The overriding objective principle is not an ancient Greek goddess of universal remedy called panacea such that its objective is to fix every kind of defects and omissions by the parties in court. In the upshot I find this appeal incompetent for being filed while there is an order by the High Court dismissing the same matter. Considering the circumstances of this case, I proceed to strike it out. I give no order as to costs. Order accordingly. Dated at Temeke this 30th Day of December 2024 S.D. MWAIPOPO JUDGE 30/12/2024

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