

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(DAR-ES-SALAAM DISTRICT REGISTRY)**

**AT DAR-ES-SALAAM**

**PC. CIVIL APPEAL NO. 55 OF 2021**

**SALMA MOHAMED IBRAHIM ..... APPELLANT**

**VERSUS**

**MOHAMED IBRAHIM ADAM ..... RESPONDENT**

(Appeal from the Judgment and decree of the District Court of Temeke at Temeke)

(A. E. Mpesa, RM)

Dated 5<sup>th</sup> day of February 2021

In

(Civil Appeal No. 20 of 2020)

**JUDGMENT**

Date: 25/04 & 19/06/2023

**NKWABI, J.:**

The appellant instituted a matrimonial cause in the Primary Court of Temeke District sitting at Temeke. The matrimonial cause was assigned number 112 of 2019. The marriage was contracted in the year 1993. In the trial court, the appellant petitioned for divorce and division of the matrimonial properties which were granted. The order for the division of the matrimonial assets was 50% to 50% for all the matrimonial assets except a house situated in Dodoma which was ordered that the appellant gets 20% while the respondent gets 80%.

On appeal to the district court, the district court faulted the findings of the trial court on the consideration only of the 1<sup>st</sup> ground of appeal. The appeal was allowed. The ground that was found to have merit was that:

*That the trial court erred in law and fact by failure to give reasonable ground for proceeding to determine the dispute despite the fact that it was objected by the appellant that he had never married Salma Mohamed Ibrahim.*

It was contended in reply submission, in the district court, by the appellant herein, that she was married while using the name of Salma Abdallah Salum and the second name is Salma Mohamed Ibrahim Adam. That when they got married, the appellant told her to use Salma Ibrahim Adam, the names of her husband. Even when they attended Bakwata, she was using the name Salma Adam Ibrahim.

In this Court, the appellant's first ground of appeal is that:

*"The learned Appellate Magistrate erred in law and fact by holding that there was no marriage between the appellant and the respondent simply because the appellant had petitioned for divorce using her post-nuptial names; whereby she adopted her husband (respondent) name while*

*there was ample evidence that there was marriage between the parties and three issues between them and that, Salma Abdallah Salum and Salma Mohamed Ibrahim is one and the same person."*

It was contended by the counsel for the appellant, Mr. Gabriel Simon Mnyele, that wives do take the husbands' names. He exemplified **Basilisa B. Nyimbo v. Henry Simon Nyimbo** [1986] TLR 93, **Joseph Warioba Butiku v. Parucy Muganda Butiku** [1987] TLR 1 and **Pulcheria Pundugu v. Samwel Huma Pundugu** [1985] TLR 7. As to the requirement of deed poll, the learned counsel stated that those are mere legal niceties which the appellant (a mere housewife) hardly know about officiating the change of names through deed polls. It was added that witnesses testified that the appellant and respondent are husband and wife.

In reply submission, the counsel for the respondent, Alex Enock, said the decision of the district court was correct and should be upheld.

As if to stress his position, in the rejoinder submission, the counsel for the appellant asked this Court not to consider the matters which were not considered in the trial court but raised in appellate court. He cited **Eliasa Mosses Msaki v. Yesaya Ngateu Mataee** [1990] TLR 90 CAT and **Hotel**

**Travertine Ltd & 2 Others v. National Bank of Commerce Ltd [2006]**

TLR 133 CAT.

I will start with the comment raised in the rejoinder submission that a matter that is not raised in the trial court cannot be raised in appeal. However, the current position of the law is that when the matter raised at appellate stage is on a point of law, that point/matter should be entertained. That position was underscored in **Julius Josephat v. Republic**, Criminal Appeal No. 3 of 2017, CAT, (unreported) where it was stated that:

*"... those grounds are new. As often stated, where such is the case unless the new ground is based on a point of law, the Court will not determine such ground for lack of jurisdiction."*

The point that was raised in the district court was a legal one. It is as to how, legally one can change his or her name without a deed poll? Or whether it was legal for one to adopt another name without a deed poll.

It is trite law that one cannot break the law and come to court to seek for assistance and be heard by a court of law. The appellant was required by the law to register the change of name. She did not do so or she has not

proved that she registered the change of name. So, that adopted name is unknown in law. It could be recognized in informal setting but not in formal setting like in court. In court, for the appellant to use the adopted name she ought to have proved the change of name by way of a deed poll. That cannot be called to be mere legal niceties as the counsel for the appellant wants this Court to believe. Being a housewife is not a defence for acting contrary to the requirement of the law.

As to the cited cases which show that wives use the names of their husbands in courts, in those cases, there was no any dispute in respect of the names so, the cited cases by the counsel for the appellant are distinguishable.

In the upshot, I dismiss the appeal for being patently devoid of merits. The decision of the district court is upheld. I do not need to discuss the second ground of appeal because it has the basis in the success of the 1<sup>st</sup> ground of appeal. Each party shall bear their own costs, this being a matrimonial suit. It is so ordered.

**DATED** at **DAR-ES-SALAAM** this 19<sup>th</sup> day of June, 2023.



*J. F. Nkwabi*  
**J. F. NKWABI**  
**JUDGE**