

IN THE COURT OF APPEAL OF TANZANIA

AT ZANZIBAR

(CORAM: KIMARO, J.A., LUANDA, J.A., And MJASIRI, J.A.)

CIVIL APPEAL NO.90 OF 2014

DENNIS FRANCIS NGOWI.....APPELLANT

VERSUS

ASTERIA MORRIS AMBROSE..... RESPONDENT

(Appeal from the ruling of High Court of Zanzibar at Vuga)

(Mahmoud J.)

dated 2nd December 2013

in

Matrimonial Petition No.18 of 2013

.....

RULING OF THE COURT

4th & 8th December, 2014

KIMARO, J.A.:

The parties have a matrimonial proceeding in the High Court in which the respondent requested for a divorce, custody of issues of the marriage and division of matrimonial assets among others. As there was no dispute on the question of divorce the marriage was declared broken down irreparably and a decree of divorce was granted.

Subsequently, the respondent made an application for temporary injunction in which he requested the High Court to issue an order to the

respondent not to dispose of some of the assets acquired during the marriage now in possession of the respondent. The High Court, (Mahmod, J.) refused to grant that order.

Aggrieved by the refusal by the High Court to grant the order, the appellant filed this appeal in which he is faulting the decision of the High Court.

The respondent raised a preliminary objection to the appeal. Among the grounds of appeal raised is:

"The purported appeal is incompetent for contravening section 5(2) (d) of the Appellate Jurisdiction Act, [CAP 141 R.E.2002]."

When the appeal was called for hearing, Mr. Gido Semfukwe, learned advocate represented the appellant and the respondent was represented by Mr. Haji Suleiman Tetere, learned advocate.

In support of the first point of preliminary objection, the learned advocate for the respondent submitted that section 5(2)(d) of the Appellate Jurisdiction Act, Cap 141 bars appeals against interlocutory

orders. He said since the order of the High Court which refused to grant the appellant a temporary order to restrain disposal of the matrimonial assets in possession of the respondent did not have the effect of finally determining the issues in dispute between the parties, the order was not appealable.

The learned advocate for the appellant conceded that the provision of the law cited provides so.

Indeed this is what the law provides. The section reads:

*"(d) no appeal or application for revision **shall** lie against or be made in respect of any preliminary or interlocutory decision or order of the High Court unless such decision or order has the effect of finally determining the criminal charge or suit"*

(Emphasis is ours).

The section is very clear. It mandatorily bars appeals against decisions and orders given by the High Court which do not finally determine the matter in dispute between the litigating parties.

The High Court is yet to be told what the parties acquired during the subsistence of the marriage. That issue is still pending in the High Court. The procedure of appeal taken by the appellant to appeal against the decision of the High Court was therefore wrong.

The respondent raised other grounds of preliminary objection in the alternative to ground one. Since the Court has resolved the first ground of preliminary objection, that the order is not appealable, that suffices to dispose of the appeal. We uphold the preliminary objection and struck out the appeal with costs.

DATED at ZANZIBAR this 4th day of December, 2014.

N. P. KIMARO
JUSTICE OF APPEAL

B. M. LUANDA
JUSTICE OF APPEAL

S. MJASIRI
JUSTICE OF APPEAL

I certify that this is a true copy of the original.




F. J. KABWE
DEPUTY REGISTRAR
COURT OF APPEAL