

IN THE HIGH COURT OF TANZANIA
(IN THE DISTRICT REGISTRY)
AT MWANZA

Misc. CIVIL APPLICATION NO. 128 OF 2021

(Arising from Matrimonial Cause No. 02 of 2021.)

NASHEENA NOORALI PIRANI----- APPLICANT

VERSUS

NOORALI NISHADALI PIRANI----- RESPONDENT

RULING

Last Order: 01.12.2021

Ruling Date: 13.12.2021

M. MNYUKWA, J.

This is a Misc. Matrimonial Application No. 128 of 2021 in which NASHEENA NOORALI PIRANI hereafter referred to as the Applicant, filed this application before this court praying for the proceedings in the Matrimonial Cause Number 02 of 2021 between the applicant and respondent one NOORALI NISHADALI PIRANI be conducted by courts video conference system, electronic exchange of documents between the court and parties and teleconference. The application is supported by the affidavit deponed by the Applicant.



The applicant afforded the services of Mr. Heri Emanuel learned counsel and the respondent is represented by Dr. George Mwaiondola learned counsel. By the order of the court the application was argued orally, by way of audio teleconference whereas parties through their counsels were remotely present.

Submitting first, the applicant learned counsel avers that the applicant brought the application for Matrimonial Cause No. 02 of 2021 be heard by the way of courts video conference and electronic exchange of documents between the court and parties and teleconference. He prays the affidavit of the applicant to be adopted to support the prayers sought in a chamber summons. He also prays the costs to follow the event.

Responding, the respondent learned counsel resisted the application and prays the same to be dismissed with costs. He prays the counter affidavit be adopted and form part of his submissions. He went on that the application at hand is not suitable to be heard by video conference. Citing regulation 5(2) of GN No. 637 of 2021 he insisted that video conference cannot be preferred if the exhibits are tendered.

In determination of this application, I went through the pleadings. Going to the applicant's affidavit, I come to learn that the applicant is now residing in 10375 Rockledge street NW, Calgary AB T3G 5P8, Canada.



The applicant further on para 5 (i) to (iii) gave reasons as to why her physical presence cannot be procured before this court. Among others, she attached a medical report dated 08.09.2021 from Laser Health Solutions that the applicant was attended medical treatment. She also stated that she looks after her elderly parents and care for them and there are also challenges on travel due to covid 19 restrictions and protocols that have been put in place.

On the respondents' counter affidavit, he denied the applicants reasons stated on the affidavit including the averment that there is travel restrictions between Tanzania and Canada, since the petitioner is the one who filed the petition of divorce she cannot complain when she is needed to appear in person and that the applicant cannot attend in person because she is seeking for an asylum in Canada.

Having gone to the pleadings, I am settled that this application is proper before this court and what is applied for is the legal process that courts should allow proceedings to be conducted remotely. Regulation 4(1) of the Judicature and Application of Laws (Remote Proceedings and Electronic Recording) Rules 2021, GN No 637, provides that: -

4.-(1) The court may, on its own motion, or on an application by a party, allow proceedings to be conducted remotely.



Guided by the above provision of law, I am aware that the Judiciary of Tanzania has adopted the audio and visual modes to accelerate dispensing of justice and also to cop-up with the technological advancement. This is evidenced by the enactment of the Judicature and Application of Laws Act (Remote Proceedings and Electronic Recording) Rules 2021, GN 637 of 2021. The Rules further provide under Regulation 5(1)(a) that: -

5.-(1) Unless it is impracticable and not in the interest of justice to do so, the court may direct remote hearing-

(a) where a party, his representative or a witness lives outside or within the jurisdiction of the court and his attendance cannot be procured without undue delay or unreasonable cost;

(b) For security reasons of the witness (c) for health reasons and (d) for any other reason that the court considers necessary and appropriate

Going to the pleadings and specifically on the applicant's affidavit, she gave reasons that she is outside of the jurisdiction and her attendance cannot be easily procured. She managed to give reasons before this court for her application under regulation 4(1) of GN 637 of 2021 to be granted.



In his submission, the respondent's counsel avers that GN No. 637 of 2021 does not allow the use of video conference if there is tendering of Exhibits.

With due respect, I beg to differ with the respondent learned counsel that Regulations 5(2) of Judicature and Application of Laws Act (Remote Proceedings and Electronic Recording) Rules GN 637 of 2021 restricts the use of video conference where exhibits will be tendered. First, the counsel intended to misdirect this court as the Regulation is clear and it provides guidance under Regulation 14(1) of GN No 637 of 2021 on how Exhibits can be tendered. Second the law did not absolutely restrict as Regulation 5(2) reads: -

*5 (2) Where a witness intends to tender an exhibit, the court shall not direct hearing by video conference, **unless it is in the interest of justice to do so.** (Emphasis is mine on bolded words)*

I am settled that the circumstances prevailing now in the present case requires the proceedings to be conducted remotely. I am also content that this is a prime time to encourage the use of advanced technology for it serves purpose, time and costs for the court and to the parties. I proceed to assure the learned counsel that there is a much reliability in the technology and several courts in Tanzania are equipped

with the facilities and therefore encouragement is placed to insist the use of technology for the interest of justice.

In the upshot, I proceed to grant the application that the Matrimonial Cause No. 02 of 2021 before this court shall proceed by way of video conference during the hearing after the arrangements are met. The matter being a matrimonial cause, I make no order as to costs.



M. MNYUKWA
JUDGE
13/12/2021

Ruling delivered in the presence of the respondent's advocate and in the absence of the petitioner's advocate.

M. MNYUKWA
JUDGE
13/12/2021