

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

PG. CIVIL APPEAL NO. 121/94

DEBORA M. MASATU ..... APPELLANT

VERSUS

ALEXANDER MASATU ..... RESPONDENT

JUDGMENT

SAMATTA, J.K.:

This is a short appeal. The parties were man and wife. Their partnership was dissolved on April 5, 1993, by the primary court of Temeke, following the filing of a petition for a decree of divorce by the respondent and the hearing of the same by the court. The appellant was aggrieved by the decision, but she did not lodge an appeal against the same within the prescribed period. In January 1994 she filed in the district court of Temeke, an application for leave to appeal out of time. The application was dismissed, the learned resident magistrate who heard the matter holding that the applicant, had failed to satisfy him that there was a reasonable explanation for the delay in instituting the appeal in his court. The appeal now before me is against that decision.


Before the subordinate court and before this Court the appellant asserted that the delay was caused, among other things, by the fact that she was not provided with a copy of the primary court's judgment. Bearing in mind that the respondent was able to secure a copy of the judgment "immediately after the expiry of 45 days from the date of judgment", the learned resident magistrate found the assertion weighing very little on his mind. For the purpose of determining this appeal, I am prepared to assume, without deciding, that the learned resident magistrate was wrong to hold, as he did, that no good reasons had been advanced to justify him granting the appellant leave to appeal out of time. It is not enough for an applicant who applies for leave to appeal out of time to satisfy the court that there were reasonable causes for the delay.

He must also satisfy the court that his appeal is an arguable one. That proposition brings me face to face with the question whether the appellant's intended appeal has such merits. In my considered

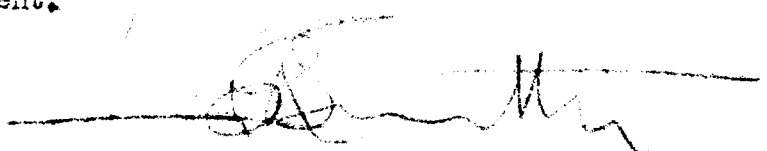
opinion, the answer to that question must be in the negative. The evidence on record demonstrates that the parties' marriage had irreparably broken down. It had so broken down that the respondent started living with another woman as man and wife. The respondent treated his monogamous marriage to the respondent as no longer subsisting. According to the evidence on record, since 1987 the appellant and the respondent have lived apart. The primary court magistrate and the assessors who sat with him in hearing the petition unanimously came to the opinion that the rocky boat could not be kept afloat. I cannot see any error on the part of the court in properly directing itself in law and fact, and concluding that that conclusion was not justified. In my view, any appeal against the granting of the decree of divorce would not be an aggrieved one. In the circumstances, even assuming that the learned resident magistrate erred in holding that the appellant had failed to show sufficient reasons why she failed to appeal within the period prescribed by law, I feel compelled by law to dismiss the appeal against the dismissal of the application for leave to appeal out of time.

Judging by some of the things she told the learned resident magistrate, when hearing her application, and myself, when hearing this appeal, the appellant is aggrieved by, among other things, the fact that no order for division of matrimonial property was made, no maintenance order was made in her favour and the fact that the maintenance order made by the trial court covered only one child. The appellant's path towards justice, as far as these three matters are concerned, may not be blocked. She may consider petitioning the primary court to invoke in her favour its powers under s.114(1), 115(1)(e) and 130(1)(a) of the Law of Marriage Act, 1971 (the Act).

For the reasons I have given, I dismiss the appeal. Guided by the provisions of s.90(1) of the Act, I make no order as to costs.

  
B.A. Samatta  
JAJI KIONGOZI

Delivered this 14th day of February, 1995, in the presence of the appellant and the respondent.

  
B.A. Samatta  
JAJI KIONGOZI