

IN THE HIGH COURT OF TANZANIA

AT MBEYA

(PC) MATRIMONIAL CIVIL APPEAL NO.3/2001

(From the decision of the District
Court of Mbarali Civil Appeal No.8
of 2001 and Rujewa Primary Court
Civil Case No. 9 of 2001)

TUNTUFYE MWASIPOSYA:::::::::::::::::APPELLANT

VERSUS

TUPONE MWASIPOSYA:::::::::::::::::RESPONDENT

JUDGMENT

MACMANJA, J.

The litigants were a married couple with effect from 5th October, 1969. Misunderstandings cropped up shortly after the marriage and the marriage went on the rocks. It was finally dissolved by the Rujewa Primary Court which held that the marriage had irreparably broken down. The trial court did not make any order regarding the distribution of matrimonial assets. That was done^{by} the Mbarali District Court in its appellate jurisdiction. In the first appeal the appellant was Tupone Mwasiposya and the respondent was Tuntufye Mwasiposya. Tuntufye Mwasiposya was aggrieved, hence this appeal.

The judgment from which it is appealed was delivered on 11th September, 2001, and the record shows that right of appeal was explained to the parties. Section 25(1)(b) of the Magistrates Courts Act, 1984, provides that if aggrieved by the decision or order of a district court in the exercise of its appellate jurisdiction, any party -

... may, within thirty days after the date of the decision or order, appeal therefrom to the High Court."

Since the first appellate decision was delivered on 11th September, 2001, the appellant's time within which to appeal accrued on 12th September, 2001. That time ran out on 12th October, 2001.

Now the record shows that the appellant lodged his appeal on 9th October, 2001 in terms of Exchequer Receipt Voucher No. 13261387. That was the same day on which the petition of appeal was presented for filing. Simple arithmetical computation shows that the appeal was filed twenty-eight days out of time. Clearly the appeal is thus time-barred. I will, as a result, not consider the merits of the appeal because the appeal the way it is not sustainable in law.

Accordingly the appeal is dismissed. There shall be no order as to costs.

sgd: J.E. MACKANJA
JUDGE
10/10/2002

22/10/2002

Coram: S.A. Lila, DR

For Appellant: Mr. Mbise, Advocate

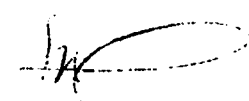
For Respondent: Absent

C/C: S. Kasubiri

Order: Judgment delivered today in the presence of learned Mbise advocate for the appellant and in the absence of the Respondent.

sgd: S.A. Lila, DR
22/10/2002

Certified true copy of the original.


DISTRICT REGISTRAR
MBEYA