

IN THE HIGH COURT OF TANZANIA

AT MTWARA

PC. MATR. APPEAL CASE NO. 7 OF 2012

**From Masasi District Court Matrimonial Appeal No. 12 of 2011 (E.
J. Nyembele esq – RM)**

Original Chikundi Primary Court Matrimonial Case No. 12 of 2011

SAIDI JAFARI ----- APPELLANT

VERSUS

GRACE YASONA ----- RESPONDENT

RULING

6th day of August 2013 and 30th day of August 2013

M. G. MZUNA, J.:

Saidi Jafari lodged an appeal to this court consequent upon the maintenance order of the District court following the order for separation of their marriage which had subsisted for 4 years. Grace Yosana raised a preliminary point of objection on the point of law.

The first issue is whether the appeal was filed out of time?

It was the argument of the respondent that the appeal was filed out of the prescribe time as judgment was entered at Masasi District court on 6/3/2012.

In reply, the appellant said that he lodged the appeal in time but he was not saved with the copy of the judgment. He received it and lodged the appeal in time. He said all the relevant documents are in the case file.

I have combed through the court record. It shows that, the appeal was filed on 27/4/2012 as per receipt No. 43324053 dated on 27/4/2012, while the judgment was delivered on 6/3/2012.

Section 80 (2) of the Law of Marriage Act Cap 29 R.E. 2002, provides for an appeal to the High Court to be filed in the Magistrate Court "within forty five (45) days of the decision or order against which the appeal is brought".

If one can count from 6/3/2012 to 27/4/12 it is about 52 days which had lapsed. Therefore the appellant's appeal was filed out of the prescribe time which is counted from **the date of the decision** as clearly stated under section 80 (2) of the Law of Marriage Act not from when one is served with a copy of the judgment.

Under Rule 37 (1) of the Law of Marriage (Matrimonial Proceedings) Rules, an Appeal to the High Court, is commenced by a memorandum of appeal filed in the subordinate court which made or passed the decision, order or decree appealed against.

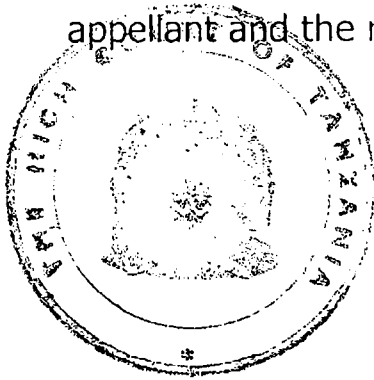
The first issue therefore succeeds in favour of the respondent.

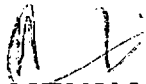
That ground alone is sufficient to dispose of this appeal. I see no need to deal with the second ground of appeal which even the respondent never addressed court. I take it that she had abandoned it.

The appeal which is filed outside the prescribed time has to be dismissed as it is improperly before the court. This appeal is marked dismissed for being filed out of time with costs.

**M. G. MZUNA,
JUDGE.
30/8/2013**

Court: Ruing delivered this 30th day of August 2013 in the presence of the appellant and the respondent.

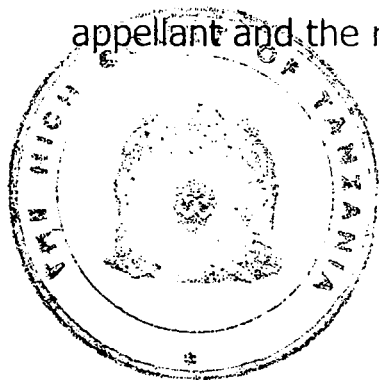




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