

**IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM
(APPELLATE JURISDICTION)**

(PC) CIVIL APPEAL NO. 62 OF 2012

(C/F the District Court of Morogoro at Morogoro in Civil Appeal
No. 50 of 2011 Originating from Chamwino Primary Court
in Civil Case No. 16 of 2011)

SALOME MLELA APPELLANT

VERSUS

JOSHUA MLELA RESPONDENT

(From District Court of Morogoro at Morogoro-Hon. A.E. Ringo, RM)

Date of Last Order: 18th September, 2015

Date of Judgment: 30th September, 2015

JUDGMENT

FELESHI, J.:

In the Primary Court of Chamwino, the respondent herein petitioned for Decree of divorce and division of matrimonial properties acquired during subsistence of their marriage in which Decree of Divorce and order for division of matrimonial properties were awarded. Aggrieved, the appellant herein, appealed to the District Court of Morogoro at Morogoro where the appeal was dismissed with costs. Further aggrieved, the appellant has filed this appeal on four (4) grounds namely:-

- 1. That, it was wrong for the District Magistrate to hold that the marriage between the couple had broken down irreparably while there was no evidence to that effect.**

- 2. That, there was application No. 124 of 2010 at Morogoro Land Tribunal, thus Matrimonial Cause No. 16 of 2011 was *res subjudice*.**
- 3. That, the trial Magistrate failed to note that, the matter before her violated sections 101 and 104(5) & (6) of the Law of Marriage, [CAP. 29 R.E, 2002] as there was no certificate duly signed by the board.**
- 4. That, both Courts below acted wrongly in ordering the division of matrimonial assets including the house in issue without taking into account the contribution made by parties in money, property or work towards the acquiring the assets.**

The hearing of the appeal was heard orally where the appellant was represented by Mr. Seng'wija advocate while the respondent appeared in person, that is, unrepresented.

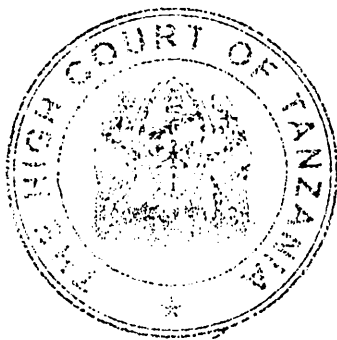
In the course of considering the merit of the submissions made by both parties this court however encountered one serious challenge. I noted that the judgment of Civil Case No.16/2011 by the Chamwino Primary Court was delivered on 5/10/2011 and the appeal to the District Court as per the ERV NO. 39111149 was preferred on 30/11/2011 thus time barred in terms of section 20(3) of the Magistrate's Court Act, Cap.11 R.E. 2002 that requires appeals to the District Court to be lodged within thirty days. This is because section 80 of the Law of Marriage Act, Cap.29 R.E.2002, does not cater for appeals from the Primary Courts. Therefore, there was no appeal before the District Court, hence there is also no appeal before this Court as it is very well known that nothing can emanate from a nullity.

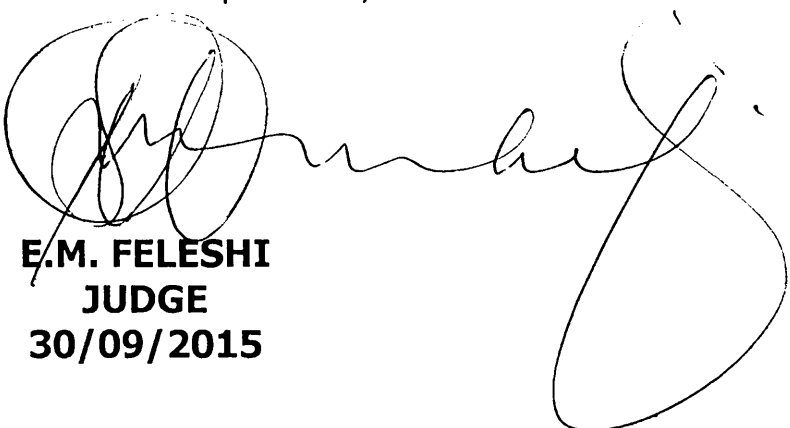
I further noted that the Judgment in Civil Appeal No. 62/2012 was delivered on 3/5/2012 and that the Appeal to this Court was filed on 20/7/2012 that is after a lapse of 78 days thus time barred in terms of section 80(2) of the Law of Marriage Act (supra) which require appeal to

be lodged within forty five (45) days and no leave was further sought for the extension of time.

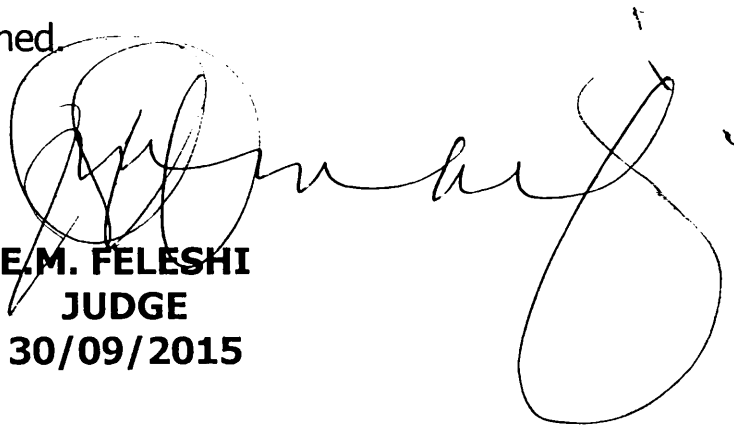
Under the circumstances, as it is very clear to me that nothing can emanate from the nullity, the proceedings, Judgment and Order of the 1st appellate Court are hereby nullified and set aside. The appeal is thus struck out for incompetence. The appellant, subject to fulfilling the legal prerequisites, can find a way of addressing his grievances. From the circumstances of the case, I make no order as to costs.

DATED at Dar es Salaam this 30th September, 2015




E.M. FELESHI
JUDGE
30/09/2015

Judgment delivered this 30th day of September, 2015 in presence of Mr. Cyprian Seng'wija advocate for the Appellant and the Respondent in person. Right of Appeal explained.


E.M. FELESHI
JUDGE
30/09/2015