IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

PC MATRIMONIAL APPEAL NO 21 OF 2018

(Arising From Miscellaneous Civil Application No 6 Of 2018 Original Ilemela Primary Court Matrimonial Civil Case No 80 Of 2017)

ZUREA DANIEL KAPIPI.....APPELLANT

VERSUS:

IDD ATHUMANI KAWALE.....RESPONDENT

JUDGMENT

07.12.2018 & 16.01.2019

Matupa, J.

The appellant was aggrieved by the decision of the Ilemela primary court. She desired to appeal to the district court of Ilemela, but she found herself trapped by the statute of limitation. She asked the court for extension of time within which to file her appeal. The reason she gave was that, she misunderstood the decision of the court, believing that she won the case, only to learn, when she obtained the judgment, that she did not. This reason did not appeal to the appellate district resident magistrate. The magistrate declined the application to extend the time for filing the appeal.

The appellant was not relented. She has come to this court to plead for the extension of time for the same reason that the delay was caused by the fact that she did not apprehend the decision of the court.

I have considered the reason for the decision of the appellate court to deny the extension of time. The reasons for the decision can be found at page two where the court disbelieved the contention by the applicant that she could not appeal on time because she did not apprehend the decision of the primary court until she obtained the copy of it. The appellate magistrate gave the following reasons for declining the application:-

> *"First of all I think I am right to say that this kind of application cannot be granted and my reasons are as follows.*
>
> *There is no way that the trial magistrate pronounced judgment which different to what is written in the certified copy obtained by the applicant, this cannot believe such allegations to be true anyhow.*
>
> *If this court is to believe such allegations to be correct will bring the meaning that the trial court judgment is to be nullified and also there will be no need for the appellant intended appeal to be heard since the decision is already being formed in this application."*

If I understood the appellate magistrate, much as he did not say so, he seemed to suggest at best that the application is flawed in procedure,

because it would be a question of impropriety and that would be redressed by way of revision. The reasoning is sound, but it is misplaced. The appellant wants to take issues with the judgment of the trial court as it is, and she does not wish to have it revised. Had she wanted to have the decision revised, then the assumption by the appellate magistrate would be in order. At best the appellate magistrate probably got the complaint by the appellant that the decision of the court was improperly muddled after it was delivered. If this what the appellate magistrate got the application that was clearly incorrect. One the appellate magistrate could not stand for a decision not of its making. Two, it was not impossible that a decision could not pass through a process of editing which would lose its meaning. Three, the court could not stand for what the applicant could have possibly apprehended the decision when it was read. The mood and the state of mind of the applicant at the time was for the applicant and not the court to tell.

Coming back to the application, the application would appropriately, be dealt with under the Law of Limitation Act. This is because appeals to the district court are regulated by section 80 of the Law of Marriage Act and not the Magistrates Courts Act as the application was made. The

section as amended by Act no 15 of 1980 directs that appeals in matrimonial proceedings shall be filed at the trial court within forty five days. Section 46 of the law of limitation act directs that where the period of limitation is prescribed by any other law, unless the contrary intention is shown in that legislation, then the provisions of the law of Limitation Act shall apply to the limitation so provided. The application of the Law of Limitation Act on computation of time is such that, where the period of limitation relates to appeals, an application for leave to appeal or an application of review of judgment, then in terms of section 19(2), the time for obtaining the copy of the relevant judgment, the subject of an appeal, leave to appeal or review is excluded.

I have scanned the record. The counter affidavit by the respondent filed at the lower court provides at paragraph 6 that the delay was only 30 days. If this is true, then, had the court computed the period of time as provided for in the law of marriage Act it would have not made the decision it made. One this legislation does not provide for the mechanism for extension of time. In the absence of the mechanism in the Act, the mechanism in the Law of Limitation Act, rather than that in the Magistrates courts Act, would come into play. Had the court invoked the correct law,

the period for obtaining the copy of the judgment would be discounted. With this period discounted, one doubts if the appeal was defeated by limitation in the first place.

The provision of section 19(2) of the Law of Limitation Act would also provide an answer to the anxiety by the learned appellate magistrate that the court should not believe the reason that the applicant did not apprehend the judgment when it was delivered. The rule in the just referred section 19(2), confirms the possibility the learned magistrate discounted. In other words, the applicant had the right to discount the whole period she was waiting for the copy of judgment for the reason that that she was best placed to frame her appeal while armed with the copy of the judgment. This time therefore did not need any extension by the court. This the court below did not address and I find that it was a reason good enough to allow the extension as of right. This reason would then be followed by another one of the length of time of forty five days provided under section 80 of the Law of Marriage Act rather than thirty days set out in the Magistrate's Courts Act. Definitely, the court misdirected itself on the computation of time.

All said, I am satisfied that the appellant had good reasons for having the time extended as of right, for the same reasons she gave. I will allow the appeal and direct that she may file her appeal before the district court within forty-five days, in terms of section 80 (1) and (2) of the Law of Marriage Act. Costs of this application shall form part of those of the appeal.

Dated at Mwanza, this 16 day of February, 2019.

S.B.M.G. Matupa,
Judge

Date: 16.1.2019

Coram: Hon. Matupa, J

Appellant: present in person.

Respondent: Mr Mathias Mashauri for the Respondent

B/c: I. Isangi

Court:

The judgment was delivered in chambers in the presence of the appellant and in the further presence of Mr. Mathias Mashauri for the Respondent this 16th day of January, 2019.

S.B.M.G. Matupa,
Judge

At Mwanza
16th January, 2019