

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(DISTRICT REGISTRY OF MBEYA)

AT MBEYA

MATRIMONIAL APPEAL NO. 05 OF 2020

(Appeal from the District Court of Momba at Chapwa in Matrimonial Appeal No. 02 of 2020. Originating from Tunduma Primary Court in Matrimonial Cause No. 145 of 2019)

EVERIST MODEST MUSHI.....APPELLANT

VERSUS

VERONIKA SANGA.....RESPONDENT

JUDGEMENT

Date of Last Order: 27/08/2020

Date of Judgment: 30/10/2020

MONGELLA, J.

The respondent herein obtained a decree for divorce in Tunduma primary court. Unsatisfied with this decision, the applicant filed an appeal in the District court of Momba at Chapwa. The appeal succumbed to a preliminary objection from the respondent on the ground that it was filed out of time. Consequently, the Hon. appellate Magistrate dismissed the appeal. The appellant however, was not amused by this decision hence, preferred this appeal on three grounds. However, since the matter was not determined on its merits in the appellate district court, I shall only deliberate on one ground of appeal, to wit that "the district court erred in

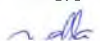


law and fact in upholding the preliminary objection on the ground that the appeal was time barred. Both parties appeared in person and the appeal was argued by written submissions.

Arguing on this ground, the appellant submitted that the Hon. Magistrate erred in holding that the appeal was time barred for 32 days while it was filed on the 29th day thus within the time limit of 30 days prescribed under the law. He contended that the district court did not consider the documents filed in court but decided to rely on the oral testimony of the respondent and arrived at the erroneous decision.

On her part, the respondent supported the decision of the District court. Relying on section 20 (3) of the Magistrates' Courts Act, Cap 11 R.E. 2019 she maintained her stance that the respondent's appeal in the District court was time barred. The said provision provides that an appeal to the District court has to be filed within 30 days from the date of decision or order against which the appeal is brought. She submitted that, the primary court issued its decision on 20th December 2019 and informed the appellant that his right of appeal was open within 30 days. However, she said, the appellant filed his appeal on 6th March 2020 after the elapse of 76 days from the date of judgment. She was of the position that even if the appellant delayed while waiting for copies of judgment; he ought to have first sought for extension of time to lodge his appeal out of time. On these grounds, she prayed for the appeal to be dismissed with costs.

After considering the arguments by both parties, my task is therefore to determine on whether the appellant's appeal in the District court was



time barred or not. It is not disputed that the decision of the primary court was delivered on 20th December 2019 and that the copies of judgment and decree were available on 07th February 2020. These facts are also evidenced by the certified documents filed in accompaniment of the memorandum of appeal.

As much as I agree with the respondent that section 20 (3) of the Magistrates' Courts Act sets a limit of 30 days from the date of decision, I am of the settled view that the said provision has to be construed in line with section 19 (2) of the Law of Limitation Act, Cap 89 R.E. 2019. This provision directs that the time one waits for copies of judgment, decree or order appealed against has to be excluded in computation of time. Elaborating on this provision, the Court of Appeal in the case of ***The Director of Public Prosecutions v. Mawazo Saliboko @ Shagi & 15 Others***, Criminal Appeal No. 384 of 2017 (CAT at Tabora, unreported) ruled that section 19 (2) of the Law of Limitation Act automatically excludes the time for waiting for copies of judgment and one need not apply for extension of time if he is still within time after such exclusion. In the case of ***Samuel Emmanuel Fulgence v. The Republic***, Criminal Appeal No. 4 of 2018 (CAT at Mtwara, unreported) the Court went further and ruled that the time should start to run from the date the copies were certified. This means that the time to be considered in determining whether a party is time barred or not is the date when the copies of judgment and decree were ready for collection, being the date the said copies were certified and not the date a party obtained the said copies.



As pointed out earlier, the record indicates that the copies of judgement were certified on 07th February 2020 and the appeal in the District court was lodged on 06th March 2020. Counting the days from 07th February 2020 to 06th March 2020 it makes a total of 29 days. I therefore agree with the appellant that his appeal in the District court was not time barred and the Hon. Magistrate erred in sustaining the preliminary objection.

Having observed as above, I hereby quash the ruling of the District court in Civil Appeal No. 02 of 2020. I order the case file to be remitted back to the District court for the appeal to be determined on merits between the parties before another Magistrate.

It is so ordered.

Dated at Mbeya on this 30th day of October 2020


L. M. MONGELLA

JUDGE

Court: Judgment delivered in Mbeya in Chambers on this 30th day of October 2020 in the presence of both parties appearing in person.




L. M. MONGELLA

JUDGE