

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(TANGA DISTRICT REGISTRY)**

AT TANGA

MATRIMONIAL APPEAL NO.5 OF 2020

(From Matrimonial Appeal No. 33 of 2019 of the District Court of Tanga Original
Matrimonial Cause No. 36 of 2019 of Urban Primary Court of Tanga)

FRANCIS VICENT MAHIMBO APPELLANT

VERSUS

ANITA GOSHASHI KALLAGE RESPONDENT

RULING

MKASIMONGWA, J

Francis Vicent Mahimbo and Anita Goshashi Kallage, the Appellant and Respondent respectively, lived as a husband and wife. Later on the Respondent went and knocked the doors of Tanga Urban Primary Court petitioning the Court for a decree of divorce and for division of matrimonial assets. In deciding the matter, the Court (Primary Court) found it being established that prior to marrying the respondent the Appellant had contracted a monogamous marriage which was yet to be dissolved. As such the Appellant was not competent to marry. In the premise, the relationship (marriage) that existed between the parties was declared a nullity and it was accordingly nullified.

As to the division of the properties jointly acquired by the parties, in terms of Section 160 of the Law of Marriage Act, the Court presumed that there was a marriage between the parties. After considering each one's contribution in acquiring a Guest House erected on Plot No 22 Block "D" Msambweni, the trial court awarded the petitioner (now respondent) a 30% of the value. That was by virtue of the judgment of the Court delivered on 30/11/2018. Later on 14/03/2019 parties appeared before the Court (trial Court) where the petitioner (now respondent) was heard praying for execution of the judgment. It is when the Petitioner (Respondent) stated as follows:

"Mimi niko tayari wakati wowote nyumba ifanyiwe tathimini ili nimlipe 30% yake ile nyumba hakuna shida"

On 12/09/2019, the Appellant prayed the Court for stay of execution pending hearing and determination of appeal/revision preferred to the District Court which appeal was eventually determined by the Court on 25/02/2020. In its decision, the District Court upheld the Order of the trial Court awarding the respondent with 30% of the house in dispute. The Appellant is dissatisfied by that decision and later on 02/04/2020 he came to this Court and lodged this appeal.

The Appeal is resisted by the Respondent and to that effect the later filed a reply to the Petition of Appeal along with a Cross Appeal against which the appellant came up with the Notice of Preliminary Objection alleging that the Cross Appeal is untenable for being filed out of time.

On the date the appeal came for hearing of the Preliminary Objection, both parties appeared in person. I have considered the submission advanced by the parties in their respective cases. It is clear that the respondent is aggrieved by the judgment of the District Court delivered on 25/02/2020. She seems to have been prompted to appeal to this Court by the appeal filed by the Appellant against her. Section 80 (2) of the law of Marriage, which provides for the period within which to appeal to the High Court against the decision or order of the District Court reads as follows;

"An appeal to the High Court shall be filed in the Magistrate's Court within forty five days of the decision or order against which the appeal is brought"

Counting from 25/02/2020 (date of judgment) to 27/04/2020 (the date the "cross appeal" was filed), it is clear that the appeal by the respondent was filed out of time. It has not been shown if there was leave for the appeal to be filed out of the time prescribed by the law.

In that premise, I will sustain the preliminary objection and the appeal by the respondent is hereby dismissed. No order as to costs is given.

Dated at Tanga this 27th of October, 2020.




E. J. Mkasimongwa

JUDGE

27/10/2020