

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF DODOMA
AT DODOMA

MATRIMONIAL APPEAL NO. 4 OF 2020

*(Arising from Matrimonial Appeal No. 5 of 2019 at Manyoni District
Court, originating from Matrimonial Cause No 07 of 2019
at Manyoni Urban Primary Court)*

ABUU SADIKI ALMASI..... APPELLANT

VERSUS

VERONICA SPRIAN KIMANZI.....RESPONDENT

JUDGMENT

Date of last Order: 12/10/2021

Date of Ruling: 03/12/2021

A.J. Mambi, J.

This is a second appeal where the appellant herein ABUU SADIKI ALMASI petitioned at the Manyoni Primary Court for divorce and distribution of matrimonial properties. Having heard the parties and their witnesses the trial Court found that the evidence of the parties did not prove legal marriage or presumption of marriage and it thus did not grant a decree for divorce or a separation order.

Nevertheless, the trial Court went ahead in distributing matrimonial properties due to their ratio of contribution. In that division, 35% of the house value went to the appellant whereas the respondent scooped 65%. Other properties/assets were awarded wholesomely to the respondent as her personal properties/assets. The appellant was aggrieved by the primary court decision and appealed before the Manyoni District Court (herein the District Court). The District Court dismissed the appeal. The appellant who appeared in person was aggrieved by the District Court and appealed before this Court basing on the following grounds;

1. That, the trial Magistrate and the Appellate Court erred in law and fact by failing to examine the evidence adduced by the appellant.
2. That, the trial Court and the Appellate Court failed to adhere with the principle of best interest of the child.
3. That, the trial Court and the Appellate Court erred in law and fact by failure to take or to consider the opinion of assessors as required by law.

In response, the respondent through the learned counsel Mr John Chigongo in her reply contended that the grounds of the appeal have no merit since the District Court properly made its decision. The respondent argued that the appellant filed the appeal after the expiration of thirty days after she (the respondent) had filed an application for execution.

During the hearing, the appellant who appeared in person prayed to rely on the grounds of appeal he had filled before this Court. The appellant briefly submitted further that both the lower courts ignored his evidence he had adduced and the trial Court determined the case without involving assessors.

In response, Mr. John, Counsel for the respondent contended that the appellant in his submission introduced a new ground of appeal contrary to the law. He further submitted that the assessors were involved at the trial Court from the beginning to the end. The learned Counsel hailed the decision of the lower courts on distribution of matrimonial asset. With regard to the custody of the child, Mr. John was of the view that the appellant if he wishes he can apply to the court for the custody.

In his rejoinder, the appellant insisted to rely on his grounds of appeal and prayed for this Court to set aside the decisions of the lower courts.

I have thoroughly gone and considered the submissions and argument by both parties including the documents. Before addressing all grounds of appeal and reply, I wish to first address the legal issue on the limitation of time which may determine as to whether this appeal can proceed or be disposed of at this stage. The respondent in her response to the grounds of appeal contended that the appeal is time bared since the petition of appeal was filed after 30 days had expired contrary to the law. In this regard, the issue is whether this appeal is time bared or not.

I have gone through the petition of appeal and found that appellant filled his appeal on 21/02/2020 while the judgment of the District Court was delivered on 08/01/2020. Indeed, the Judgement was certified ready for collection on 08/01/2020. This means the appellant filled his appeal after more than thirty days contrary to the provisions of the law. This in my view in the absence of sufficient reasons for such long-time delay, no court would have entertained that appeal. In this regard, I wish to refer the relevant provision of the Law of the Limitation Act, Cap 89 [R.E.2019]. More specifically, Item 21 of Part III of the Law of the Limitation Act provides that:

“Application under the Civil Procedure Code, the Magistrate’s Court Act or other written Law for which no period of limitation is provided in this Act or any other Written Law-Sixty days.”

Similarly Section 25 of the Magistrate’ Courts Act Cap. 11 [R:E 2019] provides that;

“(1) Save as hereinafter provided-

*(a).....
.....
.....*

*(b) in any other proceedings any party, if aggrieved by the decision or order of the district court in the exercise of its appellate or revisional jurisdiction may, **within thirty days after the date of the decision or order, appeal there from to the to the High Court;** and the High Court may extend the time for filing for filing an appeal either before or after such period of thirty days has expired.*

*(2).....
.....*

*(3) Every appeal to the High Court shall **be by way of petition and shall be filed in the district court** from the decision or order in respect of which the appeal is brought:” Emphasis Mine.*

The above provisions of the laws are clear that where a party is aggrieved by the decision of the District Court, he must appeal within thirty days to the High Court after the date of the decision or order. If the party finds himself out of time, he must first apply for extension of time to the High Court either before or after such period of thirty days has expired and the High Court may extend the time for filing an appeal out of time. There is no record to show that the appellant filed an extension of time in this court.

In my view where the law requires one to file his case, appeal or application within sixty days and he decides to file after those days, it will imply that he was not serious and had no interest in his appeal or application. My reason is based on the fact that filling an appeal after thirty days without any justification is a long time. Addressing the consequences of filing an appeal out of time the court in The Court in **TANZANIA DAIRIES LTD v CHAIRMAN, ARUSHA CONCILIATION BOARD AND ISAACK KIRANGI 1994 TLR 33 (HC)**. observed that:

"Once the law puts a time limit to a cause of action, that limit cannot be waived even if the opposite party desists from raising the issue of limitation"

The Law of Limitation Act under section 3 has put a general provision on time limitation for instituting suits or any cation. This section provides that:

*"3 -(1) Subject to the provisions of this Act, every proceedings described in the first column of the Schedule to this Act and **which is instituted after the period of limitation prescribe therefore***

***opposite there to in the second column, shall be dismissed
whether or not limitation has been set up as a defence.***

Reference can also be made to the decision of the court of Appeal of Tanzania in ***The Director of Public Prosecutions v. ACP Abdalla Zombe and 8 others*** Criminal Appeal No. 254 of 2009, CAT (unreported) where the court held that:

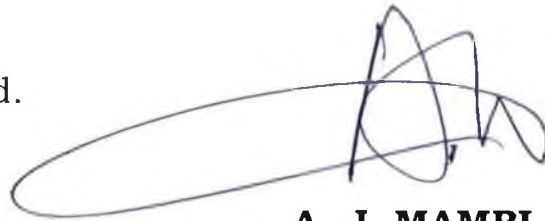
“this Court always first makes a definite finding on whether or not the matter before it for determination is competently before it. This is simply because this Court and all courts have no jurisdiction, be it statutory or inherent, to entertain and determine any incompetent proceedings.”

I therefore agree with the respondent that that the appeal was filed out of time limit required by the law. With due respect I find the appeal before this court has no merit. Since my findings have revealed that this appeal is time bared, I don't see any rationale for addressing the other grounds appeal.

All in all, the records clearly show that the appeal was not brought timeously before this court since it was brought beyond the legal requirements of 30 days. This means that the appeal is in any event hopelessly time-barred.

From the above reasoning, I find the appeal before this court is time bared. In the view of aforesaid, this appeal is time bared and it is struck out accordingly. The appellant is at liberty to file an extension of time to appeal out of time if he wishes to do so. Since the parties seem to be related, I make no orders as to costs.

It is so ordered.

A handwritten signature in blue ink, consisting of a large, sweeping loop followed by several smaller, more intricate strokes.

A. J. MAMBI

JUDGE

03/12/2021

Ruling delivered in Chambers this 03rd December, 2021 in presence of both parties.

A handwritten signature in blue ink, similar to the one above, with a large initial loop and several smaller strokes.

A. J. MAMBI

JUDGE

03/12/2021

Right of appeal explained.

A handwritten signature in blue ink, consistent with the previous ones, featuring a large loop and several smaller strokes.

A. J. MAMBI

JUDGE

03/12/2021