

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

**(ARUSHA DISTRICT REGISTRY)
AT ARUSHA**

PC CIVIL APPEAL NO. 55 OF 2020

*(C/f Karatu District Court, Civil Appeal No. 9 of 2020; Originating from Karatu Primary Court,
Matrimonial Cause No. 19 of 2016)*

ABDALLAH SALIM APPELLANT

Versus

AMINA MICHAEL RESPONDENT

JUDGMENT

16th May & 15th July, 2022

Masara, J.

Abdallah Salim and **Amina Michael** ("the Appellant" and "the Respondent" herein), contracted an Islamic marriage on 14/03/2008. They were blessed with one male child, aged 14 years now. They initially lived a happy life. During the subsistence of their marriage, they jointly acquired various properties, including two houses and one motorcycle. According to the Respondent, things changed in 2010 when tortures began. That the Appellant was regularly beating her. That the Appellant also neglected the family by denying them basic needs.

According to the evidence on record, things turned worse in 2015, when the Respondent could not get conjugal rights from the Appellant. According to the Respondent, the Appellant misappropriated matrimonial properties by taking them to his concubines. Further, that the Appellant



was no longer in love with the Respondent as he married another woman. The two went through various institutions seeking amicable settlement of their matrimonial dispute, including the social welfare office, Gender desk and BAKWATA, but to no avail.

On 10/06/2016, the Respondent petitioned for divorce and division of matrimonial assets before Karatu Primary Court ("the trial court"). The trial court declared the marriage irreparably broken down and proceeded to issue the decree of divorce. The trial court also ordered division of the two houses and one motorcycle jointly acquired on equal basis. Custody of the child was vested on the Appellant.

The Appellant was aggrieved by that decision, he appealed to Karatu District Court ("the first appellate court"). The first appellate court partly allowed the appeal by altering division of the matrimonial assets from that of the trial court. It ordered division on the basis of 60% and 40% to the Appellant and Respondent respectively. The rest of the trial court orders remained unchanged.

The Appellant was still aggrieved, he appealed to this Court vide PC Civil Appeal No. 39 of 2017. On 21/03/2018, this Court (Maghimbi, J.) struck out the said appeal on grounds of defects, as the decree did not tally with

the judgment. The file was remitted back to the first appellate court so that the decree would be rectified. It is not known what transpired in the first appellate court, as neither the rectified decree nor the defective one is part of the records available before me.

Noting that there was no appeal preferred in any court, on 18/01/2019, the Respondent wrote a letter to the trial court seeking to execute the decree of the first appellate court. After determining several issues including an objection proceeding filed in respect of one of the houses of the couple ,and after several adjournments, the trial court on 24/06/2020 allowed the application for execution by ordering execution process to take its course.

The Appellant still aggrieved, appealed to the first appellate court vide Civil Appeal No. 9 of 2020, subject of this appeal. In his appeal in the first appellate court, this time, the Appellant faulted the decision of the trial court stating that he expected the decision to be of the High Court. He also challenged the decision of the trial court stating that one of the houses, subject of attachment, belonged to his relative, one Rashid Salim and the other house was meant for their children therefore not liable for distribution. On her part, the Respondent informed the court that the appeal in the High court was dismissed. Regarding the two houses, she

firmly stated that they were jointly acquired during subsistence of their marriage. She thus prayed for dismissal of the appeal. In its decision delivered on 26/08/2020, the first appellate court dismissed the appeal. The basis of that decision is that the orders of the High Court were dully acted upon as the defective decree was rectified on 17/04/2018, hence the Appellant ought to have refiled his appeal in the High Court by 17/05/2018 but he opted not to. Therefore, the learned magistrate found the appeal time barred and dismissed the same. The Appellant was still aggrieved by that decision. He has preferred this appeal on the following grounds, reproduced verbatim:

- a) That, the District Court erred in law and fact to held that the Appellant's appeal is time barred while the appeal was based on the ruling of the trial court dated 24/06/2020 regarding the division of the matrimonial properties;*
- b) That the District Court erred in law and in fact for failure to determine the Appellant's appeal on merits which is equivalent to infringing the Appellant's right to be heard;*
- c) That the District Court grossly erred in law and fact for failure to find that the Respondent claims of the properties which are not matrimonial and there has never adduced during trial evidence which prove that the properties sought to be divided are matrimonial; and*

d) That both lower Court erred in law and fact for their failure to take into consideration the Appellant's evidence and evidence of Rashid Salim in their decisions.

At the hearing of the appeal, both the Appellant and Respondent appeared in Court in person, unrepresented. The appeal was heard *viva voce*.

Submitting in support of the appeal generally, the Appellant contended that he was waiting to be called in the High Court after the decree was rectified but he was not called. He added that he has never seen the rectified decree. He was called in the trial court which tried the matter afresh. He appealed against that decision but the first appellate court ruled out that his appeal was out of time. The Appellant added that he has appealed against the execution order, but he is still interested to pursue his appeal in this Court. According to the Appellant, they still live in the same house creating chaos as they are not in good terms.

On her part, the Respondent submitted that the Appellant is just disturbing her as he had agreed in the trial court that they have two houses and one motorcycle. She added that she is not ready to leave the house as that is her home. It was the Respondent's further submission that the execution should proceed, praying for the matter to come to an end as she lives a miserable life and the matter is costing her.

I have considered the grounds of appeal, the records of the lower courts as well as the submissions by both parties. The main issue for determination is whether the appeal has merits.

Listening to the parties during hearing, it became apparent that the Appellant was not certain as to what he intends to pursue in this appeal. In his grounds of appeal, the Appellant intimated that his appeal in the first appellate court was against the ruling of the trial court of 24/06/2020. A close scrutiny of the four grounds of appeal raised in this appeal reveal that the Appellant is challenging the decision of the trial court in respect of the execution order dated 26/08/2020. However, in his submission, the Appellant faults the decision of the first appellate court for finding the appeal time barred stating that he was waiting to be called by this Court after the decree was rectified but he was not called. He also insisted that he still intends to pursue his appeal in this Court.

I note that PC Civil Appeal No. 39 of 2017 was struck out on 21/03/2014 after the decree was found defective. In essence, the Appellant was at liberty to refile his appeal after the decree was rectified. The Order of this Court directed that time to refile the appeal would start running on the day the decree was rectified. According to the judgment of the first appellate magistrate, the decree was rectified on 17/04/2018. It is

unfortunate that the said rectified decree is not in the records supplied to me. Nevertheless, the Appellant cannot exonerate himself from laxity he exhibited.

There is no effort manifested on the part of the Appellant so as to be assured whether the decree was rectified or not. Furthermore, in his appeal in the first appellate court, there was no complaint regarding the said decree. Having noted from the decision of the first appellate court that the decree was rectified since 17/04/2018, the Appellant did not bother to inquire about the same. That would have enabled him to get a copy thereof so as to support his complaint that he was not aware of the rectification. Indeed, I agree with what was contended by the first appellate magistrate that the Appellant is employing delaying techniques so that the decision made by the trial court is not implemented.

It is unfortunate that this dispute has been in the court corridors for almost six years. It is in the interest of justice that litigation should come to an end. The maxim "*Interest Reipublicae ut sit Finis Litium*" comes into play. The Court of Appeal reiterated this aspect in the case of **Amina Maulid Ambali and 2 Others vs Ramadhani Juma, Civil Application No. 173/08 of 2020** (unreported), where it held:



*"The necessity of **finality of litigation in line with public policy that decisions must be certain and must be final in order to provide a closure** has also been emphasized in the case of Marcky Mhango and 684 Others v. Tanzania Shoe Company and Another, Civil Application No. 37 of 2003 CAT (unreported)."* (Emphasis added)

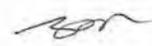
I need not say more than the emphasis stated in that decision. Even if this appeal was to be against the ruling of the trial court dated 24/06/2020 as purported by the Applicant, the outcome may not be different. It is noted that the Appellant specifically stated in his evidence at the trial court that they owned two houses and a motorcycle. That was also stated in the judgment of the first appellate court where the learned magistrate made the following observation:

"For example in first Civil Appeal no. 9 of 2017 the appellant didn't complain to acquire by joint effort with the respondent two houses, but now he came with this new story that one of the house (sic) was of his brother; but when you (sic) look proceedings (sic) and judgment of trial court in cross examination with the court, (sic) the appellant admitted to own two houses with the respondent but now in second appeal (sic) is a ground of appeal."

As earlier stated, the Appellant seems to be challenging both the Execution proceedings and the earlier decision of the first appellate court. Although the appeal before this Court is basically the one arising from the Execution proceedings and the appeal thereof, his own evidence at the

trial defeats his argument about the properties jointly owned by the two. The assertion that one of the houses belong to his relative Rashid Salim was never stated in the trial court. I will leave this matter at that as it is apparently not an issue before this Court.

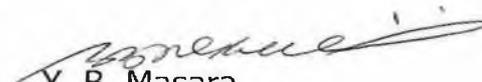
It is regrettable that the records before this Court are not as complete as one would have wished them to be. But the Appellant is to blame for the delay to file an appropriate appeal before this Court. He ought to have done so on time and in accordance with the law. I do understand that the Appellant is a layman who may be ignorant of the court procedures, but that does not give him the right to come to court at the time he wishes. The order of this Court was issued on 21/03/2018, the Appellant stayed idle until 18/01/2019 when the Respondent initiated the execution process. There is no gainsaying that the Appellant slept over his rights. As pointed out earlier, the learned magistrate of the first appellate court ruled out that the decree was rectified on 17/4/2018. The absence of the same on record notwithstanding, the Appellant should have exhibited diligence by way of a follow up or letters. His inaction until he was prompted by the execution proceedings appear to me to prove the notion put forth that he is preferring this appeal not in pursuit of a right he has



but as a delaying technic to deny the Respondent her rights spelt out by the lower courts.

From what I have endeavoured to discuss above, the appeal is devoid of merits. It is accordingly dismissed in its entirety. The decision of the trial court and that of the first appellate court are hereby upheld. I order the file to be remitted to the trial court so that the execution proceeds from where it had ended. Since this is a family dispute, I direct that each party shall bear their own costs.




Y. B. Masara

JUDGE

15th July, 2022