

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

AT KIGOMA

(APPELLATE JURISDICTION)

PC CIVIL APPEAL NO. 20 OF 2021

(Arising from Misc. Civil Application No. 03/2021 of Kasulu District Court Before I.D. Batenzi DRMi/c, and Originated from Matrimonial Cause No. 30 of 2014 at Kasulu Urban Primary Court Before R.F. Mtuli PCM)

SALEHE S/O SHABANI TANGILA..... APPELLANT

VERSUS

JOHARI D/O MABRUKI.....RESPONDENT

J U D G M E N T

18/11/2021 & 04/02/2022

MLACHA, J.

The appellant, Salehe Shabani Tangila and the respondent Johari Shabani Tangila appeared at Kasulu primary court in matrimonial cause No. 30/2014 following difficulties in their marriage. The respondent was the applicant. The primary court granted divorce, gave custody of three (3) children to the respondent with an order of Tshs 75,000/= monthly as maintenance. One child remained with the appellant. It issued a divorce certificate dated 23/2/2015 which is also the date of the decision.

The appellant remained silent. He took no steps to appeal or pay maintenance. The respondent applied for execution to enforce the maintenance orders. The court granted the application for execution on

25/5/2015 ordering the attachment and sale of the appellant's car. Feeling offended, the appellant filed Miscellaneous Application No. 8/2015 at the District Court of Kasulu seeking extension of time within which to lodge an appeal. The application was dismissed on 27/7/2015. Meanwhile, the respondent decided to proceed with the execution. The primary court ordered the attachment and sale of a car, canter, registration No. T 266 AMA to enforce the payment of maintenance which was standing at 1,800,000/=. The record is not clear whether the car was attached and sold or not. But it is clear that the appellant returned to the district court twice and filled applications which aimed at arresting the execution. He filed Miscellaneous Application No. 7/2020 seeking extension of time within which he could lodge an appeal to the district court and Miscellaneous Application No. 3/2021 seeking extension of time within which to file a revision and to revise the decision of the district court. Both applications were dismissed with costs. He could not prefer an appeal against Miscellaneous Application No. 7/2020. His appeal is in respect of the decision of the district court in Miscellaneous Application No. 3/2021. He has 9 grounds of appeal which can be reduced two grounds;

1. That, the district court erred in law and fact to find that there were grounds for extension of time.

2. That, the district court erred in law and facts to find that there were no material irregularities in the decision of the primary court calling for the exercise of revision powers.

The parties appeared in person. The appeal was heard by oral submissions. Submitting before the court, the appellant said that the primary court granted divorce while there was no marriage between him and the respondent. That, he lived with her from 1995 up to 2014 but there was no any marriage ceremony. They have 4 children but he respondent does not possess any marriage certificate. No Islamic marriage for both of them are Moslems. He went on to submit that there was no reconciliation done before coming to court. No form No. 3, he said. He added that the case was heard by two magistrates contrary to procedure which require it to be heard by one magistrate. He finished by saying that the order of payment of Tshs 75,000/= monthly is very high given his income for he has no job. He argued the court to let the children come to him for he has no money.

The respondent told the court that the appellant is cheating the court. She said that she was married in 1995 under customary law and Tshs 100,000/= was paid as bride price. That, they got 5 children but one was killed by the appellant leaving behind 4 children.

The respondent went on to submit that the appellant is a businessman with a shop (spare parts shop), a restaurant and a rented house. He is also in possession of a car, canter, which was attached in execution of the decree. He proceeded to say that they have 2 houses, one was given to her but the respondent has refused to let it come to her. He is now renting it.

Submitting in rejoinder, the appellant called the restaurant a small restaurant (Kamgahawa) and denied to have a shop. He added that the house is not rented but merely occupied by his relatives.

I had time to read the records. I had time to consider the grounds of appeal and the submissions. I will discuss the grounds of appeal together. The record is clear that the decision which was sought to be revised was delivered on 23/2/2015. Times was sought to be extended so as to allow the district court to revise the decision of the primary court which was said to have irregularities and illegalities. The application for revision was lodged on

19/5/2021. There is a gap of six years and 3 months. The question is whether the applicant had an account for each day of delay in the period in between so as to allow the court to grant the extension. The second aspect is whether the application was tenable in law.

My Look of the record of the lower court did not show an account for each day of delay. At most I could see the applications for extension of time within which to appeal and the application for revision which did not succeed. They did not cover the whole period. There were gaps between the applications which had no explanation. For example, there is a period of silence between the date of the ruling of Misc. Application No. 8/2015 and the date when Miscellaneous Application No. 7/2020 was lodged. It is nearly 5 years. There is also a gap of months between the date of the ruling in Miscellaneous Application No. 7/2020 and the date when Miscellaneous Application No. 3/2021 was lodged. It is obvious that the appellant was idle at home. He did not act diligently in attending the matter. He was negligent so to say. Failure to account for the days made his application bad in law (see **Bariki Israel v. R**, CAT Criminal Application No. 4 of 2011 quoted in **Tanzania Coffee Board v. Rombo Millars Ltd**, CAT Civil Application No. 13 of 2015).

The second question for determination is the propriety of the application for revision. It is trite law that where there is a right of appeal, an application for revision cannot stand for Revision is not an alternative of an appeal. (See **Felix Lendita v. Michael Long'ido**, Civil Application No. 312/17 of 2017).

The appellant had a right of appeal and tried to exercise it without success. The remedy was not to file the application for extension of time and revision. That was not proper. The remedy was to appeal against the rulings which denied him extension of time. He did not do so and instead he opted to follow the road to a revision which will not take him anywhere.

That disposes the appeal but I think there is an error in the records of the primary court calling for direction. The respondent was granted divorce, given custody of children and maintenance. She was thereafter advised to open a separate file for division of matrimonial assets which she did. The parties had to come again to court to give evidence. She was given one of the houses (homestead) out of the second case. I think that route was not necessary. In a matrimonial cause, once divorce is granted, there are issues which must be decided by the court side with it i.e. custody of children, maintenance and division of matrimonial assets. People may not have knowledge. Sometimes what is burning is just to get out of the marriage but

they must be guided to combine the claims to avoid unnecessary future litigations and costs. Division of matrimonial assets is not the subject of another application as was done in this case. The words "*subsequent to the grant*" used in section 114(1) should not in my view, be interpreted to mean that, division of matrimonial assets must be done in another case. I think it must be done in the same file to save time and costs and endless litigation. This is the spirit behind article 107A(2)(b) of the Constitution of the United Republic of Tanzania 1977 (as amended) which require the courts to dispense justice without undue delay. It is also part of the Judiciary Strategic plan. But I see no base for interfering with the proceedings which followed for it will not serve any useful purpose. I can only insist that in future all issues must be combined and resolved in one file based on the same evidence. People must be guided to plead and give evidence on divorce, custody of children, maintenance and division of matrimonial assets.

I will in the end direct as follows; Execution should proceed immediately and ensure that the respondent gets the house and the arrears of maintenance up to now, as directed by the primary court. It is ordered so.

The appeal is dismissed with costs.



L.M. Mlacha

Judge

4/2/2022

Court: Judgment delivered in presence of the parties.

Right of appeal explained.



L.M. Mlacha

Judge

4/2/2022