

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

PC. CIVIL APPEAL NO. 39 OF 2021

(Arising from the Judgment of the District Court of Kinondoni in Matrimonial Appeal No. 47 of 2020, Hon. H.A. Kikoga, RM, dated 15/12/2020, Originating from the decision of Matrimonial Cause No. 71 of 2020 dated 29/09/2020, Kimara Primary Court, before Hon. F. Hamis-RM)

LELA HAMIS MAGANGA..... APPELLANT

VERSUS

TIMOTHEUS THOMAS LUBUTU..... RESPONDENT

RULING

Date of last Order: 16/12/2021.

Date of Ruling: 18/02/2022.

E.E. KAKOLAKI, J

This is a ruling in respect of the preliminary objection raised by the respondent against the appellant's appeal contending that the appeal is bad in law for being time barred. The appeal is preferred as the second appeal from the decision of the District Court in Matrimonial Appeal No. 47 of 2020 handed down on 15/12/2021, which was filed by the appellant challenging the decision of Kimara Primary Court in Matrimonial Cause No. 71 of 2020,

that dissatisfied her. As both parties are represented and having considered that it is the practice of the court to dispose of first the raised preliminary point of objection, it was agreed that hearing proceed by way of written submission in which both religiously complied to the filing schedule orders. The appellant is represented by Ms. Crescencia Rwechungura learned advocate while the respondent enjoying the good legal services of Mr. Abdulazizi Baisi, learned counsel.

Presenting in favour of the raised preliminary point of objection Mr. Baisi contended that as per section 80(1) and (2) of the Law of Marriage Act, [Cap. 29 R.E 2019] herein referred to as LMA, the time frame available for aggrieved party to lodge the appeal to this court from the decision of the District Court or Primary Court is 45 days. He contended, the appellant infringed the law by lodging her appeal on 08/07/2021 which manifestly is time out and therefore the appeal ought to be dismissed as per the dictates of section 3(1) of the Law of Limitation Act, [Cap. 89 R.E 2019] hereto referred as LLA. On his prayer for dismissal of the matter filed out of time the learned counsel invited the court to consider the decision of this court in **John Cornell Vs. A. Greco Tanzania Limited, Civil Case No. 70 of 1998** and **Anand Surendra Malam Vs. Lake Cement Limited** (both HC-

unreported) where it was held the matter filed out of time has to be dismissed.

In her response Ms. Rwechungura for the appellant contested the raised preliminary objection submitting that, LMA and its Rules do not provide for time limitation for filing an appeal from the decision of matrimonial appeal from the District Court, hence resort has to be made to Part II of the 1st schedule to the LLA which provides for 45 days. She informed the court that the appeal is well within time as it was filed on 14/01/2020 since 45 days ought of have lapsed on 28/01/2020, hence the submission that, the same was filed on 08/07/2020 is misplaced. She contended if it could be recalled, on 21/06/2020 the appellant was granted with leave to amend her appeal and complied with, thus it was the amended appeal or rather amended grounds of appeal which were filed on 08/07/2020 after obtaining leave of this court which could in no way be treated as time barred. She urged the court to find the point of objection raised is devoid of merit hence dismiss it.

In his rejoinder submission, Mr. Baisi reiterated his earlier submission in chief while adding that, the formerly lodged petition of appeal contained no filing date, thus the respondent depended on the date indicated in the court summons which is 16/04/2021. As the same had no filing date he contended,

the appeal filing date which ought to be considered by the court is 08/07/2021 when the amended petition was filed and not otherwise. Adding the case of **Hashim Mandongo & 2 Others Vs. Minister for Industry and Trade and 2 Others**, Civil Appeal No. 27 of 2003 (CAT-unreported) on dismissal of the proceedings instituted after the prescribed period, Mr. Baisi prayed the court to dismiss this appeal with costs.

I have dispassionately considered the fighting submissions by both learned counsels for the parties as well as revisiting the entire record of the appellate court, the impugned judgment inclusive. What is not in dispute is the fact that the judgment sought to be challenged in this appeal was issued by the appellate court on 15/12/2020. What brings parties into disagreement is the issue as to whether the appeal is time barred counting from that date. Before I endeavour to address this issue, I am obliged to make clear the record as to time limitation for filing the appeal from the District Court sitting as appellate court. Ms. Rwechungura submits that, the LMA does not provide rather it is provided under Part II of the 1st schedule to LLA while Mr. Baisi argues the period is specified under section 80(2) of LMA. In this, I distance myself from Ms. Rwechungura's contention rather embrace Mr. Baisi's proposition that, the provisions of section 80(1) and (2) of the LMA are

categorical on time limitation within which to appeal to this court from the decision of the District Court and Primary Court which is 45 days from the date of the impugned decision. Section 80(1) and (2) of LMA reads:

*80.-(1) Any person aggrieved by any decision or order of a court of a resident magistrate, **a district court or a primary court in a matrimonial proceeding may appeal therefrom to the High Court.** (Emphasis added).*

*(2) 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.** (Emphasis supplied).*

In light of the above cited provision it is evident to me and therefore well settled law that, the provisions of the LLA are not applicable under the circumstances of this case in as far as the time limitation for filing of appeal on matrimonial cause as submitted by Ms. Rwechungura.

Having concluded on that position of the law, I now turn out to consider the above raised issue. I have taken time to peruse the petition of appeal filed formerly in examination of the complaint raised by Mr. Baisi that the same was filed without having the date of filing filled in. Unfortunately the original

copy filed in court does not support his contention since it shows the petition was presented for filing before the District Court on 14/01/2021 and admitted by the Senior Resident Magistrate on 15/01/2021, the period which is well within time counting from 15/12/2020, as only 32 days had passed since the date of the impugned decision. As the time limitation for filing the appeal on matrimonial proceedings from the District Court exercising its appellate jurisdiction is 45 days then I hold, this appeal was filed well within time. I dismiss the contention that it was filed on 08/07/2021 as what was filed on that date is the amended petition of appeal on account of the leave to so do granted by this court on 24/06/2021. In the same touch, I find the cited case of **Hashim Mandongo & 2 Others** (supra) relied on by Mr. Baisi to support the prayer for dismissal of the appeal for being filed out of time is inapplicable under the circumstances of the present matter.

It is from the fore stated reasons I am satisfied that, the preliminary point of objection raised by the respondent is devoid of merits and proceed to dismiss it as I hereby do. I order hearing of the appeal pending in court to proceed on merit.

Given the nature of the case, I order each party to bear its own costs.

It is so ordered.

DATED at DAR ES SALAAM this 18th day of February, 2022.



E. E. KAKOLAKI

JUDGE

18/02/2022.

The Ruling has been delivered at Dar es Salaam today on 18th day of February, 2022 in the presence of Miss. Nuru Juma advocate for the Respondent and Ms. Asha Livanga, Court clerk and the applicant.

Right of Appeal explained.



E. E. KAKOLAKI

JUDGE

18/02/2022

