

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

MATRIMONIAL APPEAL NO. 229 OF 2020

*(Originating from Temeke District court Matrimonial Appeal No 10 of 2020 dated 26
August 2020)*

ANGEL YOHANA KABOGO.....APPELLANT

VERSUS

SAIDI RAMADHANI MRUYA.....RESPONDENT

CORRECTED JUDGMENT

22/3/2022 & 9/5/2022

OPIYO, J.

The appellant preferred this appeal against the decision of Temeke District court in Matrimonial Appeal no 10 of 2020 delivered on 26 August 2020 on the ground that the court erred in the law and facts in failing to find that the appeal was not time barred. Both parties appeared in person

In bringing her appeal home the appellant submitted that the judgment of the primary court she appealed against was delivered on 3 January 2020

and she filed appeal on 10th February 2020 thus she was still within 45 days prescribed for such appeal. Therefore it was wrong for magistrate to hold that her appeal was time barred as it was supposed to be filed within 30 days. She argued that in matrimonial proceeding prescribed period is 45 days not 30 days as held by the District Court. As a lay person she could not cite any authority to support her argument. The respondent contested the appeal arguing that when judgment was delivered the Magistrate specifically explained to them that the appeal was to be made within 30 days. Therefore for the appeal that was filed on the 38th day was time barred as correctly decided by the District court.

Both parties' submission has been dully considered. Hon. C. M. Madili in dismissing the appellant's appeal in agreeing with the respondent that the same was indeed time barred in terms of S. 20(3) of the magistrate court Act, cap 17 RE 2019. She ruled out that S. 80(1) and (2) of law of Marriage Act is applicable when appeal is from District Court to the High Court. That was an obvious misconception as the section referred to was not the applicable section but section 80(1) of the law of marriage Act as amended by Act no 15 of 1980 which provides for 45 days for both appeals from Primary Court to District court and from District Court to High court. The

magistrate was misled by the provision of the LMA above, because of what my learned Brother, Hon I. C. Mgeta, J., held to have been a misleading oversight in the law in the case of **Omari Hamisi Faraji v. Wahija Elieshi Kyeriuloni, PC Civil Appeal No 4 of 2022, HC Temeke IJC.**

He observed so because the gist of the amendment above was not reflected in both 2002 and 2019 Revised editions. Both still retained original version of the section as it appeared in original LMA.

Therefore, as correctly argued by the appellant first ground has merits as indeed appeal was not time barred, being a matrimonial proceeding. For the reason the judgement and decree of the Temeke District court in Matrimonial Appeal no 10 of 2020 delivered on 26 August 2020 is quashed and set aside. The file is remitted back to Temeke District court for hearing the Appeal on merits. For avoidance of unnecessary bias, let it be heard by another Magistrate



A handwritten signature in blue ink, appearing to read "M. P. Opiyo", is written over a horizontal line.

M. P. OPIYO

JUDGE

9/5/2022