

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE SUB- REGISTRY OF MWANZA  
AT MWANZA**

**PC MATRIMONIAL APPEL NO. 51 OF 2023**

*[From Matrimonial Appeal No. 8 of 2023 of District Court of Kwimba;  
originally Nyamilama Primary Court's Matrimonial Cause No. 2 of 2022]*

**SUZANA JULIAS-----APPELLANT**  
**VERSUS**  
**ELIKANA SAHANI -----RESPONDENT**

**JUDGEMENT**

*Sep. 18<sup>th</sup> & 22<sup>nd</sup>, 2023*

**Morris, J**

The original matrimonial proceedings were initiated at Nyamilama Primary Court (the **trial court**). Thereat, the appellant petitioned against the respondent for the decree of divorce and division of matrimonial property. By its judgement of 10/11/2022, the trial court declared marriage of the parties above as broken down irretrievably. Consequently, the subject court distributed the matrimonial property to them. Amongst such items, the appellant was given 66 acres located at Nkoze area. The respondent was aggrieved by such decision. He successfully appealed to the District Court of



Kwimba. The latter ordered the said acres to be divided into two halves for each party to own one semi-proportion. Yet, such pattern of division disgruntled the appellant; hence, the present appeal.

The appeal is based on four grounds. However, I will combine them into two grounds for convenience and coherence of determination of this appeal. The reformulated grounds are that: the appeal before the District Court was time barred; and that the first appellate court erred in dividing 66 acres into two proportions while the just-divorced couple had jointly acquired and owned a total of 150 acres.

During hearing of this appeal both parties were not represented by advocates. Naturally, both had no significant submissions to make apart from praying to adopt respective petition and reply to petition. Nevertheless, the appellant argued that the District Court gave an unjust decision by subdividing her lawful portion of the matrimonial property. In reply, the respondent submitted that 66 acres were correctly subdivided by the District Court because parties acquired them jointly.

He added that, the alleged 150 acres included plots which are owned by his two other 'wives'. He contended further that, although he had

contracted a Christian marriage with the appellant; the matrimonial-landed properties were acquired after he had 'married' the two other so-called wives. The appellant rejoined by submitting that the entire 150 acres had jointly been acquired before the respondent purported to marry other wives.

I have intensely considered the grounds of appeal and submissions by both parties. As pointed out earlier, one of the merged grounds of appeal relates to the time limitation. The appellant wrote it in a format which indicates that the trial court erred in entertaining the appeal which was time barred. Replying to such aspect, the respondent argued that he was not supplied with copy of the trial court's judgement timely.

Matrimonial an appeal from the Primary Court to the District Court is governed by section 80 of ***the Law of Marriage Act***, Cap 29 R.E. 2019 (elsewhere, ***the Act***) as amended by ***the Laws Revision (the Rectification of Printing Errors) (the Law of Marriage Act) Notice***, GN. No. 487 of 2022. and ***the Law of Marriage (Matrimonial Proceedings) Rules***, GN. No. 136 of 1971. According to section 80 (2) of ***the Act***, appeals to the District Court from the Primary Court must be filed within 45 days from the decision.

In our case, the Primary Court delivered its decision on 10/11/2022. The appeal at the District Court was filed on 12/5/2023. That is, six (6) months and two days after the impugned decision. According to the respondent, he was not supplied with copy of judgement early enough. I am loath to accept such excuse. Three reasons justify my reluctance hereof. **One**, section 80 (2) of ***the Act*** directs the petition of appeal to be filed in the Primary Court. Therefore, there is no need for the appellant to attach a copy of the judgment or decree in matrimonial appeals to High Court. Out of the well-established *modus operandi*, the Primary Court transmits the complete records of appeal to the District Court.

**Two**, if the copy of judgement was necessary for the respondent to prepare his appeal, he was required by law to seek extension of time first before filing the appeal out of time. **Three**, the respondent appeared in execution proceedings before the Primary Court which were finalized on 27/4/2023. He was then opposing the execution only. He never notified the subject court on his intention to appeal; nor did he raise any concern about delay in being supplied with a copy of the judgement. Hence, it is not a



misplacement for this Court to infer, and thus hold, that his appeal was an afterthought strategy. Unlucky to him, he did not so think, well in time.

It is cardinal law that when the matter is filed out of time the court lacks jurisdiction to determine its merit. See the cases of ***Denis T. Mkasa v Farida Hamza (administratrix of the estate of Hamza Adam) & Another***, Civil Application No. 407 of 2020; ***John Barnabas v Hadija Shomari***, Civil Appeal No. 195 of 2018; and ***Muse Zongori Kisere v Richard Kisika Mugendi and 2 Others***, Civil Application No. 244/01 of 2019 (all unreported).

The District Court's adjudication of the matter that was untimely brought before it, is not a mere procedural irregularity. It plugs into the jurisdiction of such court. The question of jurisdiction is so fundamental and deserves adequate attention. In ***Fanuel Mantiri Ng'unda v Herman Mantiri Ng'unda*** [1995] TLR 155; ***M/S Tanzania - China Friendship Textile Co. Ltd v Our Lay of Usambara Sisters***, Civil Appeal No.84/2002; and ***Desai v Varsama*** [1967] E.A. 351 this aspect was discussed at length.

For the stated reasons and analysis given, I hold that the District Court hereof acted without jurisdiction. I am inclined to, as I hereby do, nullify the



proceedings, judgement and decree of the District Court. In effect thereof, the judgement of the Primary Court of Nyamilama and its attendant orders stand restored. The appeal is pregnant of merit even without determining the remaining ground of appeal. I allow it. This is a matrimonial matter. Each party shall shoulder own costs. It is so ordered. The right of appeal is explained to parties.



  
**C.K.K. Morris**  
**Judge**  
**September 22<sup>nd</sup>, 2023**

Ruling delivered this 22<sup>nd</sup> day of September 2023 in the presence of Suzana Julias and Elikana Sahani, the appellant and respondent respectively.

  
**C.K.K. Morris**  
**Judge**  
**September 22<sup>nd</sup>, 2023**

