

IN THE HIGH COURT OF TANZANIA

TEMEKE SUB-REGISTRY

(ONE STOP JUDICIAL CENTRE)

AT TEMEKE

PC CIVIL APPEAL NO. 05 OF 2023

(Arising from Matrimonial Appeal No. 39 of 2021 of District Court of Kinondoni; Originating from Matrimonial Cause No. 85 of 2021 of Kimara Primary Court).

ABIHUDI EDWARD LEMA.....APPELANT

VERSUS

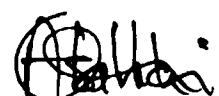
CHRISTINA SHABAN SALUM.....RESPONDENT

RULING

Date of last order: 17/05/2023
Date of judgment: 17/07/2023

OMARI, J.

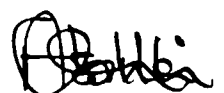
The Appellant herein being aggrieved by the decision of the District Court of Kinondoni delivered on 18 November, 2022 knocked the doors of this court to prefer an appeal on seven grounds. When the Respondent filed the Reply to the Memorandum of Appeal, she also filed a Notice of a Preliminary Objection seeking to object the Appeal on two points. The first is that the Appeal is preferred out of time while the second is that this court has no



jurisdiction to entertain the said appeal and sought the same to be dismissed on those grounds.

On the date set for hearing of the points of the Preliminary Objection the Appellant's advocate prayed for it to be disposed by way of written submissions; the Respondent did not object this and a scheduling order was set and the parties adhered to it. Both parties were represented, Benitho L. Mandele appeared for the Appellant while Johnstone Fulgence appeared for the Respondent.

Submitting in support of the points of the Preliminary Objection raised, the Respondent's counsel commenced by pointing out that the decision of the District Court of Kinondoni was rendered on 18 November, 2022 and the appeal filed on 21 December, 2022 thus the said appeal is filed three days out of time. Citing section 25(1) (b) of the Magistrates Courts Act, Cap 11 RE 2019 (the MCA) counsel argued that the appeal should have been filled within 45 days from the date of the decision. He also cited the case of **Lameck Maduka v. Maganga Njile**, Civil Appeal No. 25 of 2021 and prayed for the court to dismiss the appeal for being filed out of time.

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On the second point of objection the Respondent's counsel contended that this court does not have jurisdiction for two reasons. The first being it was brought out of time therefore the court had no jurisdiction on that basis.


The second reason is that this matter predates the establishment of the One Stop Judicial Centre at Temeke (the OSJC) thus the court cannot entertain an appeal of a matter that precedes it. On this the Respondent cited Government Notice No. 640 of 27 August, 2021 (GN. No. 640). This according to the Respondent means the appeal should have gone through the system before the establishment of the OSJC and which is applicable until now for matters that predate the OSJC for the GN. No. 640 does not provide for the court to deal with matters predating it thus, it does not apply to this appeal, therefore, this court lacks jurisdiction.

Mr. Mandele in contesting the points of the Preliminary Objection raised by the Respondent, commenced with a general observation that both points of objection are baseless and misleading. He submitted that the appeal was filed within time as per section 80(2) of the Law of Marriage Act, RE 2019 (the LMA) which states an appeal is to be filed 45 days from the date of the decision. The decision was rendered on 18 November, 2022 and the appeal was filed on 21 December, 2022. The certified copy of the decision was ready

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for collection on 07 December, 2022 which the Appellant has also stated in paragraph 7 of the Memorandum of Appeal. The Appellant argued that even if the time was 30 days which is not the case then from 07 December, 2022 to the date of the filing they would still be within time. This is so because the time for appeal in matrimonial matters is governed by the LMA and not the MCA as purported by the Respondent. In that respect the cited case of **Lameck Maduka v. Maganga Njile** (supra) is of no relevance for it is not a matrimonial case.

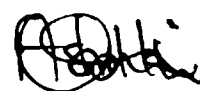
On the second point of objection that the court has no jurisdiction because the appeal is out of time the Appellant's counsel reiterated what he already stated in defence against the first point then went on to submit on the issue of establishment of the OSJC. On the said contention, the Appellant averred that it is an objection that is baseless. He submitted that GN. No. 640 establishing the OSJC was establishing a registry to hear all cases and appeals from courts in the Dar es Salaam Region. To demonstrate this, the Appellant argues that all other courts are not accepting appeals on matrimonial matters so as to facilitate speedy and effective trial of matrimonial matters. The Appellant opined that the framers were not seeking to establish two parallel systems where other courts continue to deal



with appeals emanating prior to its establishment. This makes the objection baseless for there is no where in the said GN. No. 640 where matters that precede it should continue in ordinary courts. With that argument the Appellant concluded his submission by praying that the objections be dismissed for being baseless and lacking in merit.

In rejoinder, Mr. Fulgence stated that section 80(2) of the LMA is not applicable for matters originating in the primary court thus it is section 25(1) (b) of the MCA that is applicable as the LMA is for matters that originate in the district court and the courts of the Resident Magistrates. Being that this appeal is from the Primary Court and an appeal was filed in the District Court then the law applicable is section 20(3) and section 25(1) (b) of the MCA.

On the second limb of the objection the Respondent's counsel argued that the law cannot operate retrospectively, thus, matters that proceed the OSJC cannot be heard by it. Being that the appeal was heard in the Kinondoni District Court while this court was in existence then why did it not get transferred to the District Court of Temeke at OSJC. The Respondent argued that in the same respect then the proper court is the High Court Main Registry (*sic*).

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Having considered the submissions of both parties it is opportune for this court to determine whether the points of the Preliminary Objection raised by the Respondent are meritorious.

Starting on the first point of objection as regards the appeal being filed out of time. The law applicable in matrimonial proceedings, appeals to the High Court in this context, is the LMA and the Law of Marriage (Matrimonial Proceedings) Rules 1971 GN. No. (the Rules). The Respondent's counsel argued that the LMA is silent on the number of days to appeal from the primary court to the district court, stating that this is essential for there is no appeal that emanates from the primary court to the High Court it must go to the district court first and this being the case there being no specific provision then it is 20(3) of the MCA that is applicable. For avoidance of doubt section 20 (3) of the MCA states as follows:

'Every appeal to a district court shall be by way of petition and shall be filed in the district court within thirty days after the date of the decision or order against which the appeal is brought.'

For clarity I also find it necessary to consider the provisions of section 18(1) of the MCA which gives power to the Primary Court to determine matrimonial proceeding. The section in part states:

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*'A primary court shall have and exercise jurisdiction...
(b) in all matrimonial proceedings in the
manner prescribed under the Law of Marriage
Act.'* (emphasis supplied)

As already stated matrimonial matters including appeals are governed by the LMA the Rules. The current appeal being from the district court to this court, the applicable law is section 80(2) of the LMA which provides for 45 days for one to appeal, it states:

'An appeal to the district court or to the High Court shall be filed, respectively, in the primary court or in the district court within forty-five days of the decision or order against which the appeal is brought.' (emphasis supplied)

This means Mr. Fulgence's argument that there are no specific number of days in the law for an appeal from the primary court to the district court is mistaken to say the least. Furthermore, Rule 37(1) of the Rules provides for the procedure for pursuing an appeal from the district court to the High Court as follows:

'An appeal to the High Court under section 80 of the Act shall be commenced by a memorandum of appeal filed in the subordinate court which made or passed the decision, order or decree appalled against.'

In addition, Rule 37 (3) of the Rules provides that upon receipt of a Memorandum of Appeal the subordinate court shall transmit the

Memorandum of Appeal together with the record to the High Court. This appeal was filed in the District Court of Kinondoni on 21 December, 2022 as per Rule 37(1) of the Rules. From 18 November, 2022 when the decision was rendered to the date of filing is a total of 34 days which makes the appeal within time with a couple of days to spare. Therefore, the first limb of the Preliminary Objection fails and is overruled.


On the second limb of the Preliminary Objection the Respondent is basically questioning the jurisdiction of this court to hear an appeal of a matter that predates it. For clarity, the Judicature and Application of Laws (One-Stop Judicial Centre at Temeke) (Establishment) Order, 2021 GN. No. 640 of 27 August, 2021 reads:

'There is hereby established the one One-Stop Judicial Centre of Temeke at Temeke High Court Sub-Registry for the purpose of speedy and effective trial of probate and administration causes and matrimonial matters originating in Dar es Salaam Region.'

As argued by counsel for the Respondent, the matter from which this appeal emanates from, that is, Matrimonial Cause No. 85 of 2020 does indeed predate the OSJC as it was filed on 28 April, 2021 the decision for which was delivered on 21 May, 2021. Nonetheless, to answer the contention as to why

Matrimonial Appeal No. 39 of 2021 was not heard by the Temeke District Court at the OSJC rather it was heard by the Kinondoni District Court whilst the Temeke District Court at the OSJC was already in existence. The record depicts that the appeal to the Kinondoni District Court was filed on 02 July, 2021. This was before the establishment order for the OSJC which was published on 27 August, 2021. Clearly the argument as to why the same was not heard by the Temeke District Court at OSJC is feeble as by then the same was non-existent. In that regard it was right for the Kinondoni District Court to hear the appeal for it was the court with the jurisdiction to do so.

The appeal was heard and judgment delivered on 18 November, 2021. Therefore, the current appeal is born post establishment of the OSJC. To make it simple, when the Appellant filed this appeal at the Kinondoni District Court pursuant to Rule 37 of the Rules, the case file was transmitted to this court for it is now the court with jurisdiction to hear the matter as it is a matrimonial matter and it originates from Dar es Salaam. This is the descriptor of what the OSJC was established to do. The High Court Dar es Salaam Sub-Registry would have been the proper registry if this appeal had been filed before 27 August, 2021. In that regard, the second limb of the Preliminary Objection is unmeritorious thus it is also overruled.



Having found both limbs of the Preliminary Objection raised by the Respondent untenable and are hereby dismissed; the matter to be heard on merit. I make no order as to costs.

It is so ordered.



A.A. OMARI
JUDGE
17/07/2023

Ruling delivered and dated 17th day of July, 2023.

A.A. OMARI
JUDGE
17/07/2023