

IN THE HIGH COURT OF TANZANIA
(DODOMA DISTRICT REGISTRY)
AT DODOMA

PC MATRIMONIAL APPEAL NO. 3 OF 2019

(Originating from the Makole Primary Court in Matrimonial Cause No. 20 of 2018,
Arising from the District Court of Dodoma in Matrimonial Appeal No. 22 of 2018)

MOHAMED WAZIRI..... APPELLANT

VERSUS

AISHA JUMARESPONDENT

9/11/2020 & 16/11/2020

JUDGMENT

MASAJU, J.

The Respondent, Aisha Juma, successfully sued the Appellant, Mohamed Waziri, in the Primary Court of Makole for divorce and distribution of Matrimonial properties vide Matrimonial Cause No. 20 of 2018. Aggrieved with the decision, the Appellant appealed to the District Court of Dodoma at Dodoma where the Respondent raised a Preliminary Objection on point of Law that the appeal was bad in law for being time

That, the certified true copy of Judgment and proceedings was given to the Appellant on the 22nd day of October, 2018. That, the Appellant filed his appeal in the District Court of Dodoma on the 22nd day of November, 2018 through the service of his lawyers within 30 days of his service of the trial Court's judgment and proceedings. That, the law provides in section 19 (5) of the Law of Limitation Act, [Cap 89] for the Court to consider the period of time for obtaining the copy of proceedings and exclude it from the remitted time for appeal.

The Appellant submitted on the 2nd ground of appeal that, the District Court erred in law and fact for Ruling that section 19 (5) of the Law of Limitation Act, [Cap 89] do not apply into matters originating from decision of Primary Courts. The Appellant argued that the Law of Limitation Act, [Cap 89] is a general law which prescribe for limitation of actions. That, the law cited by the District Court, the Civil Procedure (Appeals in proceedings originating in Primary Courts) Rules, 1964 (GN 312 of 1964) does not state anything about the limitation of actions originating from the Primary Court nor the mode of counting the period of limitation. The Appellant prayed the Court to allow the meritorious appeal so that, the appeal in the District Court be heard on merit.

There is no doubt that the Judgment/decision of the trial Court was delivered on the 18th day of July, 2018. The same copy of Judgment was certified and delivered to the Appellant on the 22nd day of October, 2018. The Appellant lodged his appeal in the District Court of Dodoma on the 22nd day of November, 2018 that is within 30 days of obtaining the copy of judgment.

In the trial Court the parties appeared unrepresented since it is the requirement of the law that advocates are not allowed to appear and represent parties in the Primary Courts. After the decision of the trial Court, the Appellant wrote a letter to the trial Court with the heading, thus;

"YAH: 1. KUSUDIO LA KUKATA RUFAA

2. OMBI NKALA YA HUKUMU YA KESI NO. 20/2018

3. OMBI NAKALA YA MWENENDO WA KESI NO. 20/2018."

The letter was received three (3) days after the decision was delivered as it can be seen in the trial Court's record. Meaning that, the Appellant had an intention of filing an appeal. Submitting in support of the appeal, the Appellant argued that the copy of Judgment and Proceedings was not meant to be attached to the Petition of Appeal, but rather assisting

Procedure (Appeals in Proceedings Originating in Primary Courts) Rules, 1964, (G.N 312 of 1964) does not provide for whether or not the time for obtaining a copy of Judgment and/or proceedings thereof is excluded from the time limit of filing appeal from the Primary Court to District Court. The court is of the considered position that the time requisite for obtaining a copy of proceedings and Judgment appealed against is excluded in computation of the period of limitation. How could the Appellant process the well informed grounds of appeal or any other legal remedy without recourse to the judgment or record of proceedings of the Court whose decision he intends or seeks to challenge? The parties to cases are to be supplied with copies of judgment, ruling or record of proceedings in time if they need them for whichever legal remedy as of their right so that they can process and draw the well informed grounds of appeal or any legal remedy on either point of law or fact accordingly.

That said, the meritorious appeal is hereby allowed. The decision and orders of the District Court of Dodoma are hereby quashed and set aside respectively. The District Court of Dodoma shall hear the