IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL REV. NO. 61 OF 2002

MAGRETH MUKAMA .....APPLICANT

VERSUS

BRUNO MUKAMA..... RESPONDENT

R U L I N G

ORIYO, J.

This ruling is in respect of an application for revision against trial court's decision in Misc. Civil Application No. 199 of 1999 at the Magistrates Court at Kisutu. At the outset, I wish to place it on record that the trial record before me does not contain copies of pleading's in the matter. The facts portrayed in the ruling are as constructed from a copy of the proceedings and the decision of the trial court. Any shortcomings should be viewed against that background.

The parties were married under Christian rites in 1992. They cohabited at various places in Tanzania and their union was blessed with two issues in 1993 and 1995. In 1996, the marriage started going sour and the respondent moved to Mwanza, where he resides

and works for gain todate. The applicant and the issues of the marriage remained in Dar es Salaam.

The applicant filed the above application at the trial court for orders that the respondent pay shs. 80,000/= per month as maintenance for herself and the issues. Another prayer was for orders to enable the applicant and issues reside in their matrimonial home located at Plot No. 490, Block D, Sinza Madukani Dar es Salaam. The respondent defaulted appearance in court and the applicant was granted leave to proceed exparte. According to the record, she tendered evidence at the trial through an affidavit and further evidence was tendered orally. After considering the evidence tendered, the trial court granted the first prayer for the respondent to pay maintenance allowance of Shs. 80,000/= per month. The second prayer asking the court to evict the tenant from the Sinza home to enable the applicant and issues reside therein was not granted. The trial court did not grant the second prayer on the ground that it had no jurisdiction in matters of landlord / tenant. The trial court stated that such jurisdiction was vested with the Regional Housing Tribunal, as it was at the time.

The applicant was not satisfied with the second order and preferred this application for revision against the trial courts order. The applicant faulted the trial court's decision for failing to take into

account the fact that the said house is a matrimonial home and that she as a wife and the issues were left without accommodation.

On the part of the respondent; he was aware of the revisional proceedings and engaged counsel. Neither the counsel nor the respondent himself attended court proceedings or complied with court orders. For example, though he was granted time to file a counter affidavit, he did not file one; but, he filed, through his counsel, written submissions to argue the revision. In the absence of a counter affidavit to back up the submissions, the same is subjected to the usual attendant consequences as mere submissions from the bar.

It is trite law that jurisdiction of a court is vested by statute. If a court proceeds to adjudicate over a matter without jurisdiction its decision is a Nullity. What the trial court stated was that matters of landlord and tenant had been vested in the Regional Housing Tribunal by statute. I am of the considered opinion that the trial court cannot be faulted for that decision. It is evidently clear from the Ruling of the trial court that the court considered the requirements of SECTIONS 63 (a) and 129 (1), Law of Marriage Act 1971; on the duty of a husband / father to maintain his wife/children respectively; in order to arrive at the decision which ordered the respondent to pay monthly maintenance allowance of shs. 80,000/=. The trial court appreciated the problems that the applicant and issues were facing, but could only assist where appropriate prayers were made.

mouth from the respondent or not. If the respondent has defaulted, the applicant is entitled to seek an enforcement of the order from the trial court. On the other hand, if the respondent has been paying and applicant proved that the sum of shs 80,000/= is inadequate; the applicant could seek for other orders within the jurisdiction of the trial court, such as an order that the respondent pays part of the rent from the Sinza house to the applicant to enable her pay for a decent accommodation for herself and the issues; etc. The wishes of the applicant will dictate.

The status is complex. For almost ten (10) years in separation, neither party has initiated Divorce or separation proceedings; and there has been no application for division of matrimonial assets either.

Let it be as it may and for the reasons already stated the application for revision is not granted. The order of the trial court is upheld.

The applicant is a legal aid recipient from WLAC and I make no order for costs.

K. K. Oriyo
JUDGE
25/8/2005

ORDER:

1. Application not granted.
2. No order for costs.

K. K. Oriyo
JUDGE
25/8/05