

ORIGINAL

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**[IN THE DISTRICT REGISTRY]**

**AT ARUSHA**

**(DC) CIVIL APPEAL NO. 01 OF 2019**

(Originating from the Decision of the Juvenile Court of Arusha at Arusha  
Urban Primary Court)

**GABRIEL SIMBA..... APPELLANT**

**VERSUS**

**NEEMA GABRIEL @SIMBA .....RESPONDENT**

**JUDGMENT**

10/06 & 14/08/202

**MZUNA, J.:**

Neema Gabriel, in her capacity as a wife of Gabriel Simba (but currently separated) obtained a decree which was issued by the Juvenile Court of Arusha at Arusha Urban Primary Court. The Juvenile court granted the application thereby ordering the appellant to pay a monthly rate of Tshs 250,000/= for maintenance of children in addition to education expenses.

The appellant was aggrieved, hence this appeal. He has lodged four grounds of appeal which in my view can be summarized into three points as hereunder namely: **One**, that the appellant earning capacity is lower than 250,000/= he was ordered to pay; **Two**, that the two children (first born and second born) are employed and earn a living on their own; And, **lastly**,

that the trial court failed to investigate the whole matter for a fair assessment of actual amount to be paid.

The main issue is ***whether the awarded amount of Tshs 250,000/= for maintenance was reasonable in the circumstances of this case.***

During the hearing, both parties appeared in person and unrepresented. There is a point which should not detain me, it emerged at the appeal stage. The appellant proposed that the student who is currently studying should stay with him, being his only son. There and then he can pay for his school fees. This matter was not raised during the trial. Hence it cannot be taken up on appeal. It is trite law that at the appeal stage the appellate court only dwell on matters decided at the trial. It was stated in the case of **Richard Majenga v. Specioza Sylvester**, Civil Appeal No. 208 of 2018 CAT at Tabora (unreported) while citing the case of **James Gwagilo v. The Attorney**, Civil Appeal No. 67 of 2001 (unreported) and **Hotel Travertine Limited & 2 Others v. National Bank of Commerce** [2006] TLR 133 at page 10 that:-



*"As a matter of general principle an appellate court cannot consider matters not taken or pleaded in the court below to be raised on appeal"*

Issue of placing custody to the parties was not canvassed at the court below. It cannot emerge at this stage.

Now on the raised grounds. The question to ask, was there any material upon which the awarded Tshs 250,000/- was based? There is an argument that the trial court failed to consider that the two children are not dependants. Even the respondent did not dispute this fact in her submissions during the hearing at the trial court. The record is clear that the two children that is first and second born earn their living independent of their parents. Therefore, it is my view that the trial court considered this when assessing the amount to be awarded as maintenance.

The point is, what material facts did the trial court consider? During hearing the appellant said that he is not employed and has no farms and business as alleged. That, there was no mention where the said business and farms are located. This no doubt was in response to the argument advanced by the respondent who said that the appellant decided to leave and stay with another wife. He collects Tshs 480,000/- from rental charges and has also a stationary business.

The trial court assessed the arguments of both parties and proceeded to award Tshs 250,000/- while the respondent had asked for lesser amount of Tshs 240,000/-. which was meant to sustain the last born alone.

One thing which is apparent is that there was no social enquiry report from the Social Welfare Officer as well stated under section 85 (1) (a) read together with section 84 (1) and (2) of the Law of the Child (Juvenile court procedure) GN No. 182 of 20/5/2016 so as to "assess the ability of the parents to provide for the maintenance and care of the child". This no doubt would have mitigated the extent of the burden which the appellant has in maintaining another house hold where he stays.

The respondent proposed to the appellant to mention any figure which he sought was ideal. The appellant proposed Tshs 50,000/-. All matters considered, I think the said proposed monthly maintenance allowance of Tshs 50,000/- is too minimal even if the respondent and her children have a house left for them to stay in. She even raised her concern that the saloon business which she operates earns her Tshs 2000 per day. I find and hold that the amount of Tshs 200,000/- per month is fair and reasonable under the circumstance. The awarded Tshs 250,000/- per month is hereby set aside and substituted thereof one of Tshs 200,000/- per month. It should be

reviewed every after (6) six months. It should be effective from 26/9/2018 when the order was first made by the first trial court.

I have made this order mindful of the fact that the only child who needs school fees is the last born currently in form IV at Oldadai Government Secondary School which does not require payment of school fees.

That said and done, the ruling and order of the trial court is varied to that extent. Appeal partly allowed with no order as to costs.

  
**M. G. MZUNA,**  
**JUDGE.**  
**14. 08. 2020**