IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

CIVIL APPEAL NO. 12 OF 2020

(C/F The Juvenile Court of Arusha at Arusha Urban Primary Court in Miscellaneous Civil Application No. 34 of 2018)

MARKO HAULE ..... APPELLANT

VERSUS

VERONICA LAURENCE ..... RESPONDENT

J.H ..... INFANT

JUDGMENT

ROBERT, J:-

The Appellant, Marko Haule, a Church Minister at Evangelistic Assemblies of God (Tanzania) at Sakina in the city of Arusha filed an application at the Juvenile Court of Arusha at Arusha Urban Primary Court against the Respondent Veronica Lawrence praying for the following orders: A declaration that the petitioner (Appellant herein) is not the biological father of J.H (infant); the parties be subjected to a DNA test; and costs of the petition. The Appellant maintained that he never had sexual relationship with the Respondent who is one of the members of his church whereas the Respondent sought to establish that the Appellant had been her lover with

whom she had a child by the name of J.H. After a full trial the court made a finding that the child J.H is the son of the Appellant herein and declared the Appellant a biological father of the child J.H. Consequently, the court ordered the Appellant to provide maintenance at a tune of TZS 100,000/= per month to the Respondent and to provide for education, shelter, food, cloth and health insurance for the best interest of the child. The trial court dismissed the application with costs.

Aggrieved, the Appellant appealed to this court armed with five grounds of appeal which I take the liberty to reproduce as follows One, the trial court erred in law and in fact when it granted prayers which were not sought by the Respondent. Two, the trial court erred in law and fact in granting the prayers contrary to the law. Three, that the trial court magistrate erred in law and in fact in delivering the Ruling on 28/02/2020 in the absence of both parties while the court records show that the Ruling was to be delivered on 19/02/2020. Four, the trial court erred both in law and in fact by relying on the contents of DNA which does not follow the contents of the law.

When the appeal came up for hearing on 22nd June, 2020 this court ordered the appeal to be argued by way of written submissions as prayed for by the learned counsel for the Appellant.

Starting with the first ground, the learned counsel submitted that the trial Court Magistrate in her Ruling at page 4 had ordered the Appellant to provide maintenance at the tune of TZS 100,000/= per month to the Respondent, such payment to be done each 5th day of the month before the court and further that the Appellant should make sure that the child JH gets best education, shelter, food, cloth and health insurance for his best interest. He argued that the reliefs were never prayed for by the Respondent in her written statement of defence filed on 24/7/2018. He argued that the Respondent's prayers were only for maintenance of the child. He therefore submitted that it is a settled principle that parties are bound by their own pleadings which are petition/plaint and written statement of defence. He referred the court to the Court of Appeal decision in the case of Anthony Ngoo and Davis versus Kitinda Kimaro, Civil Case No. 25 of 2014 (unreported) which held that:

> *"the practice of the courts is to consider and deal with the legal result of the pleaded facts, although the particular legal result alleged is not stated in the pleaded case must be decided on the issues on the record and if it is desired to raise other issue they placed on the records by amendment".*

The learned counsel argued that the Respondent's written statement of defence claimed for maintenance of the child but the Hon Magistrate ordered for the maintenance of the Respondent contrary to what was pleaded.

In response, counsel for the Respondent submitted that the trial juvenile court granted the orders as stated in the Ruling by considering the welfare and best interest of the infant, also it went further to order that the same maintenance be paid to the respondent herein who is the mother and is the one who is residing with the infant JH. He argued that the order was in conformity with the provisions of Rule 86(1) of the Law of the Child (Juvenile Court Procedure) Rules, 2016 which provides that:

> "The Juvenile Court shall order for the payment of child maintenance to be made (a) to the parent or person caring for the child or children in question".

He argued further that the court's order which directed the Appellant to provide best education, shelter, food, cloth and health insurance to the infant was done subject to the provisions of section 9(3) of the Law of the Child Act, 2009 which gives a parent duties and responsibilities towards his child

to provide guidance, care, assistance and maintenance for the child and assurance of the child's survival and development.

This court is of the firm view that, the trial court having made a finding that the Appellant was the biological father of the child J.H and given that the Respondent had prayed for maintenance of the child to be paid for, in making the maintenance order the trial court, considering the rights of the Child under the Law of the Child Act, was right in granting the relief sought by the Respondent. This court finds that the trial court's order for the Appellant to provide maintenance at the tune of TZS 100,000/= per month to the Respondent is not an order for maintenance of the Respondent. As rightly submitted by the learned counsel for the Respondent, the Juvenile Court can order for the payment of child maintenance to be made to the parent or person caring for the child as provided for under Rule 86(1) of the Law of the Child (Juvenile Court Procedure) Rules, 2016. In this case the Respondent was the parent and the person caring for the child. The reliefs granted by the trial court were for maintenance of the child and therefore the trial court did not grant any relief not sought for by the Respondent.

Accordingly, I find no merit to this ground of appeal and the second ground of appeal which is substantially similar to this ground. The Appellant opted not to address the second ground of appeal in his written submissions.

On the third ground, he submitted that the trial court violated the provisions of Rule 13(1)(b) of the Law of the Child (Juvenile Courts) Procedure GN 182/2016 which requires that when a child is a party to or subject of civil proceedings and attends the court hearing, the court shall explain to the child in languages that he understands to the person who is in attendance at the court, any judgment given and the consequences of that judgment to the child. He submitted that the Ruling of the court was delivered in the absence of both parties which means the requirement of this Rule was not complied with.

Responding to this ground of appeal, the Respondent submitted that delivering of Ruling by the court in the absence of parties does not occasion any miscarriage of justice. He referred the court to the case of Yakobo Magoiga Kichere versus Peninah Yusuph, Civil Appeal No. 55 of 2017, CAT Mwanza (unreported) at pg 13 where the Court of Appeal urged courts to deal with cases justly and to have regard to substantive justice.

He argued further that the provisions quoted by the Appellant in his submissions on this ground are not relevant to the present matter because those provisions were intended to apply where a child is a party to a suit and is capable of understanding the proceedings. In the present matter the child was never a party to the case in the trial court and this appeal. He stated that the child being of 3 years at the time of trial was unaware of what was going on.

This ground will not detain this court, the provisions alluded to by the Appellant applies when a child is a party to or subject of civil proceedings and attends the court hearing which is not the case in the present matter. The application lodged in the trial juvenile court was between the Appellant and Respondent and the child, being three years old at the time, would not understand the proceedings in the court. This court finds no merit to this ground of appeal.

Coming to the 4th ground, the learned counsel submitted that there was doubt in the contents of the DNA which requires this court to reorder the test of DNA to be conducted in another laboratory since in Miscellaneous Civil Application No. 31/2017 the DNA laboratory made a test of DNA between the same parties which bear Registrations No. NZA/L10/01/700

dated 12/02/2018 in which the same laboratory gave an opinion that the test was not proper and it ordered the parties to take another test. He questioned why the previous DNA test was incompetent and why the DNA test results in Misc. Civil Appl No. 34 of 2018 showed that J.H was 99.99% the child of the Appellant.

Responding to the submissions in this ground of appeal, counsel for the Respondent opposed this ground and submitted that the Appellant was the one who initiated the suit before the trial court and requested for the DNA test which was granted by the trial court. Both the Appellant and the child were tested and the results revealed that the Appellant was 99.99% biological father to the child.

He argued that counsel for the Appellant is trying to confuse this court by making reference to Misc. Civil Application No. 31 of 2017 which is not the subject of this appeal and not part of the proceedings of the Juvenile Court. He noted that if the appellant was dissatisfied with the results in Misc. Application No. 31/2017 which is not subject of this appeal he could have taken the necessary actions in that application instead of bringing a new matter and facts not canvassed in the trial court. He referred the court to

the case of Tanzania Cotton Marketing Board versus Cogecot Cotton Company S.A (2004) T.L.R 132 in support of his argument.

Submitting further on this ground, the learned counsel stated that submissions must only contain arguments of case law and statutory provisions and not evidence as counsel for the Appellant did in his submission in chief. He referred the court to the case of Bish International B.V and another versus Charles Yaw Sarkodie & Another, Land Case No. 9/2006 HC at Dsm (unreported) which affirmed the decision of Vocational Education Training Authority vs Ghana Building Contractors and Another, Civil Case No. 198/2995 HC Dsm and he further held at page 4 and 5 of the Ruling that:

> *"I think that is good law because allowing a party to attach annextures to the submissions is like allowing production of evidence at a premature stage. And what is worse is that such document cannot be tested by adversary party say, by cross examination. By any yardstick, I think this is a practice which should be discouraged. Only authorities referred to in the submission should be annexed".*

He challenged the act of the Appellant counsel to annex the purported letter from the Government Chemist Laboratory used in Miscellaneous No. 31/2017

and considered it as an abuse of court process and implored the court not to consider it.

Based on the arguments made, the learned counsel prayed for the appeal to be dismissed with costs.

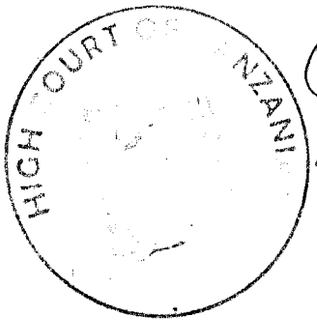
This court finds no substance in this ground of appeal. The appellant has failed to address this court on the alleged doubts in the contents of the DNA which would compel this court to reorder the DNA test to be conducted in another laboratory. The mere fact that the DNA conducted in respect of the proceedings of Miscellaneous Civil Application No. 31/2017 were inconclusive does not by itself create any doubt in the subsequent DNA report which was conclusively conducted at the request of the Appellant himself. Most importantly, the proceedings of Miscellaneous Civil Application No. 31/2017 are not before this court and therefore this court cannot make findings and determination based on matters which are not before it. This court finds no merit on this ground of appeal.

The Appellant did not address the court on his fifth ground of appeal. However, it is obvious that with the collapse of his fourth ground of appeal,

the fifth ground which challenges the trial court's holding that the infant J.H is his biological child lacks legs to stand on.

Consequently, I find no reason to fault the decision of the trial court. Accordingly, the appeal is hereby dismissed for lack of merit.

It is ordered.



K.N.ROBERT
JUDGE
18/11/2020