

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

HC. CIVIL APPEAL NO. 62 OF 2020

(Original Misc. Civil Application No. 20 of 2020)

GERALD MANYILIZU APPELLANT

VERSUS

LILIAN MACHOTA RESPONDENT

JUDGMENT

09 & 10/11/2020

RUMANYIKA, J.:

The appeal is against a ruling of Nyamagana Juvenile Court dated 16/07/2020 with respect to award of shs. 70,000/= payable by the father one Gerald Manyilizu (the appellant) as maintenance allowance for the two juveniles namely Batongwa Gerald and Gladness Gerald. Lilian Machota (now the respondent) was the successful petitioner.

The single ground appeal revolve around the point that ordering the appellant to pay shs. 70,000/= per month the learned resident magistrate was not justified.

Both parties appeared in person.

In a nutshell the appellant submitted that it sounds like before reaching at the impugned order, the learned resident only heard the respondent much as the appellant had another 8 children to take care else out of the two, the seven (7) years should have gone to his custody. That

he owned it yes, but the guest house was no longer viable or productive and, through the local authorities he had in that regard informed the Tanzania Revenue Authority. That in fact he did not live in the guest house but just within the vicinity in a separate house also his property.

The respondent submitted that he was employed for gains as teacher and he owned a 16 bed room guest house at Nyashana centre, Nyamagana district hence able to pay the negligible shs. 70,000/=. That she was a griever by the order but having considered ordinarily time consuming civil litigations she preferred no appeal. That for better and safe upkeep of the children the appellant could not be a proper custodian because the irresponsible father was always away and he lived in a guest house such that if anything, the mere guest house attendants would take care of the children. That is all.

The issue is whether by ordering the impugned shs. 70,000/= for the 2 children per month the learned Resident magistrate was justified.

At least it is undeniable facts; **one;** that the appellant was father of the two juveniles **two;** that not only the appellant was an employed for gain Secondary School teacher and he owned such a big guest house as alleged by the appellant, the guest house may have had not been that productive due to unstable collections and, in that regard one having had complained to the TRA yes, but on that one this court was not shown any kind of the TRA's response. In other words in terms of source of economic gains and livelihood the appellant was better off than the respondent who, according to records she had undefined economic means with regard to

the order of shs. 70,000/= I shall have nothing to fault the learned Resident magistrate **three**; still the two children were juveniles worth the name much as the younger was two (2) years old and the older one was seven (7) years old.

In considering custody of the child courts of law only takes the best interest of the child as priority number one. The appellant may wish to have the older child under his custody yes, but he did not convince the court on how could the child's interest and growth be infringed had the child remained under custody of the mother? That one in my considered view it was the gists of Rule 83(1) of the Law of the Child (Juvenile Court Procedure) Rules, GN 182 of 2016 out of shs. 150,000/= claimed by the mother one having been paid shs. 35,000/= per child per month!, on average shs. 1,000/= per day for shelter, food, clothing and other necessities in the town? There is no wonder that too, the respondent was aggrieved by the order. In fact the appellant was lucky.

In the upshot, the devoid of merits appeal is dismissed with costs. It is very unfortunate that with effect from 16/07/2020 when payment was due the appellant was not charged and prosecuted in court for the offence of neglecting the children. It follows therefore that should the appellant be aggrieved here, unless he had deposited in the Juvenile Court the allowance arrears **plus** one year allowances, any appeal, revision, review or any other steps to be taken by him it shall be improper and clear abuse of the court process. It is so ordered.

Right of appeal explained.


S. M. RUMANYIKA

JUDGE

09/11/2020

Judgment is delivered under my hand and seal of the court in chambers this 10/11/2020 in the absence of the parties at noon.




S. M. RUMANYIKA

JUDGE

10/11/2020