

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**CIVIL APPEAL No. 228 OF 2019**

**GEORGE A CHIMBO.....APPELLANT**

**VERSUS**

**JACKLINE HERMAN.....RESPONDENT**

(Appeal from a decision of the District Court of Kinondoni at Kinondoni)

**(Frank- Esq, SRM.)**

Dated 7<sup>th</sup> October, 2019

in

Misc. Civil Case No. 223 of 2018

-----  
-----

**JUDGEMENT**

21<sup>st</sup> October & 18<sup>th</sup> December 2020

**AK Rwizile, J**

This appeal has a history of its own. Its genesis is from affiliation case No. 2 of 2013. The respondent had approached the District court of Kinondoni praying for the declaration that the appellant is the Biological father of Isabella George Chimbo. She also prayed for custody and maintenance. The court made such asked declaration, placed custody of Issabela to her, allowed access, an order for maintenance at the sum of 50,000/= per month, school and medical expenses on the appellant.

The records do not seem clean enough but it seems the appellant unsuccessfully battled that case. Later, he filed Misc. Civil Application No. 223 of 2018 before the same court under section 133 of the Law of Marriage Act, section 37(1) and (2), 39(1) and (2) (a-c), (f) and (g) of the Law of Child Act and order XIII rule 2 of the Civil Procedure Code. He was mainly asking the District court to vary its custody order and place custody to him, from the respondent. The court did not grant his application. He was not satisfied by the decision hence this appeal.

The appellant advanced sort of 6 grounds of appeal, but if I got them clearly, his main complaints are, **one** that custody order given to the respondent be revoked because the child is living with 3<sup>rd</sup> party. **Second**, that there was no proof of age of the child before the trial court since all evidence in that respect was based on hearsay. **Third**, that the respondent does not live in conducive environment to be given custody of the Child. **Fourth**, that the decision of the trial court did not have sufficient reasons for determination.

Parties are lay members and stood without representation. It was the appellant who briefly said, that the conditions where the respondent is living with child are not conducive. He asked for change of custody to him. He therefore asked this court to take into account of all grounds advanced and reverse the order.

On party of the respondent, she was of the view that she is entitled to live with her child and asked for maintenance of the same. From the outset, it is crystal clear that this appeal arose from an application for custody. It was filed before the trial court in 2018 and was determined in 2019.

The question to determine is whether the District Court had jurisdiction to trial the matter.

In 2009, with the advent of the Law of the Child Act [Cap 13 R.E 2019], many laws that related to children matters were repealed. Among them was the Affiliation Act. The same created a new regime of rights of the children. Section 97(1) of the law established the Juvenile Court. It states as follows;

*97.-(1) There shall be established a court to be known as the Juvenile Court for purposes of hearing and determining child matters.*

Having established the Juvenile court with jurisdiction to hear child matters, the law conferred jurisdiction under section 98 which states as hereunder;

*98.-(1) A Juvenile Court shall have power to hear and determine- (a) criminal charges against a child; and  
(b) applications relating to a child care, maintenance and protection.*

*(2) The Juvenile Court shall also have jurisdiction and exercise powers conferred upon it by any other written law.*

*(3) The Juvenile Court shall, wherever possible, sit in a different building from the building ordinarily used for hearing cases by or against adults.*

In order to have the juvenile courts in operation, section 99 empowers the Chief Justice to make rules through which courts are to operate. Through Government Notice No. 182 of 2016, the rules were made.

Having juvenile courts fully established, the District Court therefore ceased to have jurisdiction on child matters. The District court therefore, as the law stood when this application was filed was not vested with jurisdiction to hear the case. Neither was it vested with jurisdiction to hear the original case filed under affiliation Law because by then it was a repealed one. Section 160 of the LCA states as here under;

*160.-(1) Repeals the Affiliation Act, Adoption Act, Day Care Centres Act, the Children and Young Persons Act and the Children Home (Regulation) Act with savings.*

The powers of the District Court to entertain custody and maintenance orders are retained in the matrimonial proceedings arising from the petitions for divorce and separation under section 125 and 126 of the Law of Marriage Act. Therefore, because the impugned application was not from matrimonial proceedings, the trial court had no jurisdiction to entertain both, the Affiliation Cause No. 2 of 2013 and therefore the impugned application. That being the case under section 44(1)(b) of the Magistrates Court Act; which states;

*44.-(1) In addition to any other powers in that behalf conferred upon the High Court, the High Court-*

*(a) ....*

*(b) may, in any proceedings of a civil nature determined in a district court or a court of a resident magistrate on application being made in that behalf by any party or of its own motion, if it appears that there has been an error material to the merits of the case involving injustice, revise the proceedings and make such decision or order therein as it sees fit.*

I have therefore to quash both the judgement in Affiliation Cause No. 2 of 2013 and Misc. Civil Application No. 223 of 2018. I make no order as to costs.

**AK Rwizile**  
**JUDGE**  
**18.12.2020**

Delivered in the presence of both parties, this 18<sup>th</sup> day of December 2020

**AK Rwizile**  
**JUDGE**  
**18.12.2020**

 Recoverable Signature

X



---

Signed by: A.K.RWIZILE

