

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

**ARUSHA DISTRICT REGISTRY**

**AT ARUSHA**

**CIVIL REVISION NO. 4 OF 2021**

(Originating from Civil Appeal No. 18 of 2019 at Karatu District Court of Karatu)

**ISRAEL ROBERT..... APPLICANT**

**VERSUS**

**FEBRONIA WILLIAM.....RESPONDENT**

**RULING**

20/8/2021 & 17/9/2021

**ROBERT, J:-**

Before me are records of Civil Appeal No. 18/2019 from Karatu District Court forwarded to this Court in order that the Court may consider whether or not to exercise its powers of revision.

For proper appreciation of the circumstances in which the Court was prompted to take up this course of action it is convenient to narrate the background of the matter albeit briefly.

By a letter dated 14/12/2020, Hon. I.B Kuppa, Resident Magistrate In-charge of Karatu District Court forwarded the record of Civil Appeal No. 18/2018 involving what he considered to be improper or irregular decision of Hon. Mbonamasabo, SRM purporting to change the decision

of this Court (Hon. Maige J, as he then was) in respect of Civil Appeal No. 25 of 2017 originating from Matrimonial Cause No 12/2016.

Records indicate that, the Respondent Febronja William, filed a petition for divorce, division of matrimonial property and maintenance of children (Matrimonial Cause No. 12 of 2016) at Karatu Primary Court against the Applicant, Israel Robert. After a full trial, the Applicant was ordered, among others, to pay maintenance for the children to the tune of Tshs. 150,000/= per month. Dissatisfied, the Respondent filed Civil Appeal No. 5/2017 at the District Court of Karatu challenging the decision of primary court on division of matrimonial assets. The District Court (Hon. Mbonamasabo, RM) dismissed the appeal for being devoid of any merit and reversed the decree of the trial court on maintenance by substituting the amount of TZS 150,000/- per month granted by the trial Court with TZS 80,000/=. Still aggrieved, the Respondent filed the second appeal to this Court (PC Civil Appeal No. 25 of 2017) challenging the decision of District Court. In the final result, the appeal partly succeeded to the extent of the decree of maintenance and failed to the extent of distribution of matrimonial assets.

The Applicant having failed to provide maintenance costs for the children as ordered by the Court, the Respondent filed Civil Case No. 50

of 2019 at the Primary Court of Karatu claiming TZS 700,000/= being the maintenance costs for the children for 8 months unpaid for. At the end of the trial, the judgment was delivered in favour of the Respondent herein and the Applicant was ordered to pay the said amount. Aggrieved, the Applicant filed Civil Appeal No. 18 of 2019 at Karatu District Court armed with six grounds of appeal which reads as follows:

- 1. That, the trial magistrate erred in both law and fact to institute the civil case no. 50/2019 on concept of decision made by Hon. I. Maige, J which directed the Primary court to consult Welfare officers for issues of maintenance.*
- 2. That, the trial court erred in both law and fact to entertain the matter which basically ended in High Court.*
- 3. That the trial court erred in and fact (sic) to ignore the Appellant's defence that his salary does not satisfy the court needs since after all deduction, the appellant left with two hundred thousand Tanzania ~~Shillings on hand (200,000)~~*
- 4. That the trial magistrate erred in law and fact to decide the case on base of decree of the high court, but on other hand the trial magistrate failed to show concrete documents to support the said judgment.*
- 5. That the appellant humbly request this honorable to suspend the current maintenance of Tanzanis Shillings 80,000/= pays by the Appellant custody.*
- 6. That the Appellant herein annexed copies of the judgment for reference of this court and marked p2 collectively.*

In his judgment, without deliberating on specific grounds of appeal, the Hon. Magistrate decided as follows:

*"Therefore let the Respondent before to (sic) select which is better to hand children to the Appellant or to stay with the children for her own costs because all the parents are duty bound to provide maintenance for their custody of children. Other remained dispute or unpaid money will solved (sic) automatically.*

*It is so ordered"*

Apparently, the decision of the Hon Magistrate is marred with a few irregularities. First, it made a determination on the question of maintenance which was already determined by the High Court in PC Civil Appeal No. 25/2017. It should be noted that, in Civil Case No. 50/2019, which was the subject of appeal before the District Magistrate, the Respondent as the party in whose favour the maintenance order was granted by this Court in PC Civil Appeal No. 25/2017 had applied for an order of the court against the Applicant who was in arrears with maintenance. The court was not moved to determine afresh on the issue of maintenance.


Secondly, by deciding that *"Other remained dispute or unpaid money will solved (sic) automatically"* the Hon Magistrate made a decision not to decide on maintenance arrears which the Applicant, as a defaulting party, owed to the Respondent. This brings unintended

benefit to a party who is in arrears with maintenance and makes it impossible to execute maintenance orders given by this Court in PC Civil Appeal No. 25 of 2017.

In the circumstances, I quash and set aside the decision and orders of the district court emanating therefrom. The decision of the primary court is therefore left undisturbed.

Ordered accordingly.



  
K.N. ROBERT  
JUDGE  
17/9/2021