

IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY
AT MWANZA

HC. CIVIL APPEAL NO. 40 OF 2021

(From the decision of Nyamagana District Juvenile Court Case No. 14 of 2021)

FRANK CLAUDIO NDABOYA & 3 OTHERS.....APPELLANTS

versus

TIBA ADAM SIZYA.....RESPONDENT

JUDGMENT

27th Nov & 10th Dec, 2021

RUMANYIKA, J:.

Here the point may not be whether or not husband and wife were separated or divorced but rather aggrieved by judgment and decree dated 26/08/2021 of Nyamagana district juvenile court on the issue of custody of the children. Against Tiba Adam Sizya (the respondent), here is Frank Claudio Ndaboya (the appellant).

Messrs G. Mwingira and Nasra Songoro learned counsel appeared for the appellant and respondent. I heard them through mobile numbers 0752 585 316 and 0684 4798 897 respectively.

In a nutshell, Mr. G Mwingila learned counsel submitted that had the lower court properly analyzed the evidence adduced and, under S. 73(c)

(d) (e) of the Child Act, consider best interest of the children and some essential under laid factors it would have arrived at a different conclusion notwithstanding the respondent's economic muscles and ability much as the children had been only under custody of the respondent's custody and the respondent intended to deny him access to the children. Grounds 2 and 3 of appeal abandoned.

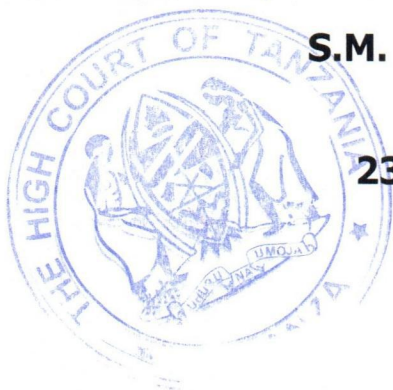
Having had adopted contents of the reply to memorandum of appeal equally briefly Ms. Nasra Songoro learned counsel generally argued and submitted that there was nothing upon which to fault the lower court given the parties readiness general abilities, the social inquiry report and the principles laid down as per provisions of S.73 (3) of the Act that whether or not the respondent intended to deny the appellant right to access the children it was mere fears. That for some time the respondent may have had fled the home and abandoned the children but the fact was so new that it wasn't even deposed in the supporting affidavit and she was the children's choice. That is all.

The central issue is whether between the parties best interest of the children demanded that the respondent take custody of the children much as it was common knowledge and trite law that where both parents were

alive, ready and able, like it was the case here none, other than the latter shall take custody of the children (S. 7 of the Act and the case of **Halima Kahena v. Jayantilal G. Kiria (1987) TLR 147**) unlike the respondent who was desirous and ready to have the children under her, the appellant had just placed the children to say the least under 3rd party namely paternal aunt and grandmother of the children therefore most likely jeopardy of best interest of the children.

It is very unfortunate that the appellant did not tell the court if the appeal was dismissed how the best interests of the children were going to be jeopardized. At times it being early 2000 or something, but due to matrimonial misunderstandings the respondent may have had fled home and left the children back yes, but I now that she had successfully applied for custody of the children, on that one with greatest respect her historical back ground was immaterial under the circumstances suffices in favor of the respondent the point to dispose of the appeal. The appeal lacks merits. It is dismissed. Each party shall bear their costs. It is so ordered.

Right of revision explained.

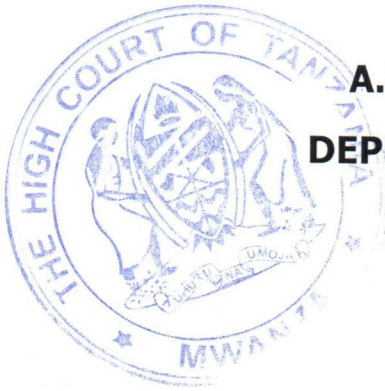


S.M. RUMANYIKA

JUDGE

23/11/2021

The judgment delivered under my hand and seal of the court in chambers this 10th December, 2021 in the absence of both parties.




A.W. MMBANDO
DEPUTY REGISTRAR

10/12/2021