

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF BUKOBA
AT BUKOBA**

CIVIL APPEAL No. 06 OF 2021

(Originating from Civil Application No. 07/2020 of the District Court of Bukoba)

PATRICK RWEKAMWA.....APPELLANT

VERSUS

DAINES DOMINICK.....RESPONDENT

JUDGMENT

1st June & 09th June 2022

Kilekamajenga, J.

In the case at hand, the appellant, Patrick Rwekamwa, was ordered by the District Court of Bukoba to maintain his child who is in the custody of the respondent. Such cost of maintenance was fixed at the tune of Tshs. 60,000/= every month. The appellant was unhappy with the order of the trial Court hence this appeal. He framed three grounds to challenge the decision of the District Court. The grounds are coached thus:

- 1. That, the trial Magistrate vehemently erred in law and fact to order maintenance of Tshs. 60,000/= per month against the appellant without first establishing his monthly income and wealth by evidence from the parties.*
- 2. That, the trial Magistrate grossly erred in law and fact for failure to identify that both parents are at equal footing in law to maintain their children, thus; it ought first to identify the income and wealth of both parties for the purpose of issuing an executable maintenance order to either party.*



- 3. That, the trial Magistrate grossly erred in law and fact for ordering maintenance order against the appellant for an amount he can't afford while in fact he was ready to be given a child for custody and maintenance taking into consideration that the child is 11 years.*

When the appeal came for hearing, the appellant appeared with the legal representation of the learned advocate, Mr. Gildon Mambo; the respondent, on the other hand appeared in person. Mr. Mambo for the appellant argued that, according to the law, it is an obligation of parents to maintain the children. However, the Court was supposed to ascertain the monthly income and wealth of both parties (parents). In this case, the income of the appellant was not established hence he (the appellant) has no capacity to pay Tshs. 60,000/= per month as maintenance to the child. The counsel argued further that the appellant can only afford to pay Tshs. 20,000 per month as maintenance. Mr. Mambo referred the Court to the cases of **Mwatumu hamis Kitemo v. Abdulkadhi Mushi, Juvenile Civil Appeal No. 1 of 2020; Mathayo Loishinye v. Veronica Baynit, Civil Appeal No. 36 of 2019.** The counsel urged the trial Court to ascertain the income of the appellant. In alternative, as the child is about 12 years old, the Court may order the child to be in the custody of the appellant. The counsel informed the Court that, the appellant is a motorcycle (*bodaboda*) rider.

On his side, the respondent insisted that the appellant is able to pay Tshs. 60,000/= as maintenance to the child as he owns and runs a business of motorcycle. Also, the appellant has two houses with tenants. To prove the appellant's wealth and income, the respondent argued that, in 2020, the appellant even contested for the post of the Council (*Diwan*). She further argued that, the appellant left the child when she (child) was just three months old and she is now 10 years old and attending primary school in standard IV. The appellant has never provided any maintenance to the child and he is an irresponsible parent to have custody of the child.

Now, having considered the grounds of appeal; what can be gleaned therefrom is whether the trial Court was right in ordering the appellant to pay Tshs. 60,000/= as maintenance to his child. There is no doubt, the appellant is the biological father of the child who is currently in the custody of the respondent. The child is now 10 years old and attending primary school in standard IV. It is also undisputed fact that, since the birth of the child, the appellant has never provided any substantial maintenance to the child. The appellant runs a business of "*bodaboda*" and he has two houses with tenants. Due to his financial stability, the appellant contested for a political position of a Council in 2020. On her side, the respondent has been maintaining the child for over ten years without any assistance from the appellant. I think, it is an opportune time for the appellant to

support the maintenance of the child. I have considered the submission from the parties and I am fully convinced that, the appellant is not penurious to the extent of failing to provide maintenance of at least, Tshs. 2,000 each day which makes a total of Tshs. 60,000/= per month. I appreciate the authorities supplied to me by the counsel for the appellant in respect of orders for maintenance. I am also aware of **section 44 of the Law of the child Act, Cap. 13 RE 2019** which provides that:

44. A court shall consider the following matters when making a maintenance order-

- (a) the income and wealth of both parents of the child or of the person legally liable to maintain the child;*
- (b) any impairment of the earning capacity of the person with a duty to maintain the child;*
- (c) the financial responsibility of the person with respect to the maintenance of other children;*
- (d) the cost of living in the area where the child is resident; and*
- (e) the rights of the child under this Act.*

Based on the above provision of the law, I am alive, in ordering maintenance, the Court should consider the income and wealth of both parents; the financial responsibility of the person with respect to the maintenance of other children; the cost of living in the area where the child is resident and impairment of the earning capacity of the parents.

In the case at hand, I am satisfied that the appellant may provide the maintenance of Tshs. 60,000/= to the child. I find no merit in the appeal and hereby dismiss it. I further emphasize that the appellant should provide maintenance to the child at the tune of **Tshs. 60,000/=** from the date of the order of the trial Court and he shall continue to provide such maintenance until the child reaches a point of not requiring maintenance from her parents. It is so ordered.



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Ntemi N. Kilekamajenga
JUDGE
09th June 2022

Court:

Judgment delivered this 09th June 2022 in the presence of advocate Danstan Mujaki holding brief for advocate Gildon Mambo. Both the appellant and respondents are present.



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Ntemi N. Kilekamajenga
JUDGE
09th June 2022

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