

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

AT DAR ES SALAAM

CIVIL APPEAL NO. 86 OF 2021

(Originating from Civil Appeal No. 314 of 2020)

HILARY SAMWELI KERARYO.....APPELLANT

VERSUS

REBECA P. WEREMA.....RESPONDENT

JUDGMENT

MRUMA, J.

This appeal will not to detain me much. The Respondent Rebeca P. Werema lodged an application in the Juvenile Court of Dar es Salaam at Kisutu for maintenances of a child Ruthi Hilary Keraryo born on 14th July 2013 at Kawe Dispensary in Dar es Salaam. The Respondent stated in the Juvenile Court that the present Appellant is the biological father of the child Ruth Hilary Keraryo and therefore liable to maintain her.

In his counter- affidavit, the Appellant denied to be the biological father of Ruth Hilary Keraryo. He averred that the Respondent was an opportunist because before instituting the present proceedings she had

complained to the Regional Commissioner about the same issue and when DNA test was conducted the result was negative. The Appellant did not.

After hearing both parties, the learned presiding Magistrate found that on the evidence adduced the Appellant was the biological father of the child Ruth Hillary Keraryo. The learned Magistrate went ahead and ordered the Appellant to pay Tshs 50,000/= monthly towards maintenances of the child. The Appellant was also ordered to enrol the child to any health insurance fund .

In reaching the decision that the Appellant was the biological father of the child, the learned Resident Magistrate took into consideration the fact that when the parties were given option to go for DNA test the Respondent agreed, but the Appellant hesitated and requested the court to proceed to compose its ruling based on the evidence available.

The Appellant was aggrieved by the ruling and orders of the trial court and has appealed to this court on four grounds. Three grounds out of four are based on technicalities. They are;

1. That the Juvenile Court of Dar es Salaam at Kisutu, erred in Law in entertaining the matter which was time barred.
2. That the Juvenile Court of Dar es Salaam at Kisutu, erred in law in her failure to struck out an incompetent application which was made in

contravention of Rule 83 (1) of the Law of child(Juvenile Court Procedure) Rules and

3. That the Juvenile Court of Dar es Salaam erred in law in declaring to child to belong to the appellant committed by the Respondent.

All these grounds are on technical aspect of the matter. Article 107A(2) (e) of the constitution of the United Republic of Tanzania requires courts in delivering decision in matters of Civil and Criminal nature to dispense justice without being tied up with technicalities provisions which may obstruct dispensation of justice. Section 4(2) of the Law of Child Act obliges court in delivering decision to observe the best interest of the child. Best interest of a child and justice cannot be done if a matter like the one at hand will be dismissed for simple reason that it is time barred.

On the allegation of forgeries by the Respondent, it is common knowledge that forgery constitutes criminal offence chargeable under the Penal Code. In the instance appeal there was no evidence to the effect that the Respondent has been convicted or even charged with for forgery. Thus, this ground lacks merits.

The last ground was on factual issue and that is about DNA. The Appellant complains that the DNA test was done using different names of

the alleged child. The Appellant does not deny the fact that DNA test was done to the child. What he says is that it was done by using different names. In my view using different names in DNA test cannot change the fact that the child is his child.

That said this appeal lacks merits. It is dismissed. If the Appellant is still thinks that the child is not his child, the Juvenile Court should always be available to facilitate (on appellant's application and costs) the conduct of DNA test by the relevant authority.

As this is child maintenance case, each party should bear own costs.




A.R.MRUMA

JUDGE

4/8/2022

4/8/2022

Coram: Hon. A.R.Mruma,J

For the Applicant: Absent

For the Respondent: Present

Cc: Delphina

Court: Ruling delivered in absence of the Appellant but in presence of the Respondent this 4/8/2022.




A. R. MRUMA

JUDGE

4/8/2022