IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MWANZA DISTRICT REGISTRY

AT MWANZA

CIVIL APPEAL NO. 40 OF 2022

(Arising from Misc. Civil application no. 11 of 2021 in the Juvenile Court of Ilemela D.C by Hon. A. Sumari R.M, dated 10th of June, 2022)

JAMES JOSEPH LISSU ..... APPELLANT

VERSUS

JENIPHER MUSSA KILAKA ..... RESPONDENT

JUDGEMENT

15th August & 12th September, 2022.

ITEMBA, J.

This appeal arises from the decision of the Juvenile Court of Ilemela whereas the respondent had made an application against the appellant for maintenance of their child one G.J.J. herein, the child.

At the Juvenile court, the appellant objected the application and disputed to be related to the said child. He moved the court to order a paternal test to be done through 'DNA' examination of the child. The test results were that the appellant has 99.99% chances of being the father of the child. Thereafter, the court heard both parties and issued a ruling in which the application by the respondent was allowed. It was declared that, the appellant is the biological father of the child and he was ordered to pay TZS 70,000=, as monthly maintenance of the child and provide for clothing, educational and medical needs.

The appellant was not amused by the decision and has preferred this appeal. In his memorandum of appeal, he has listed 5 grounds which I will reproduce hereunder.

1. *"That trial court erred in law and fact by failure to show appellant the envelope that contain DNA results so that he can verify as to whether that envelope was sealed before opened it which act casts doubt to the genuine of the DNA report.*
2. *That the trial court erred in law and fact not to call the person who prepared the DNA report or anybody from the office responsible to tender and testify on the proprieties and result of that report as the maker was not the court or litigants before the court could proceed to admit the same.*
3. *That the trial court erred in law and fact for failure to address on the question of absence of the name of the place where the report was prepared since the seal did not bear that hence it casts doubt on genuiness of the report.*
4. *That the trial court erred in law and fact for failure to supply copy of the DNA results report to the appellant for him to prepare his defense*
5. *That the whole decision was against the law and evidence on the record."*

When the matter was scheduled for hearing, both parties fended for themselves. In his submission, the appellant argued all the grounds of appeal jointly and he was generally challenging the DNA test results. He stated that the respondent is claiming that the he is the father of the child

while he is not. That he requested for the DNA test and they went with the court officer to the office of the Chief Government Chemist (CGC) for the test. That the CGC promised to call both parties and the said court officer once the results are out, but that did not happen, as the court officer collected the result by himself.

He added that when the application was scheduled for hearing at the Juvenile Court, the trial magistrate could not find the result and he asked the parties to go outside the court. That, the said court clerk was seen coming from the 'stationery office' carrying an envelope. That, the parties were called inside the court and the results of the DNA test were read. The appellant is questioning the conduct of the magistrate asking the parties to go outside the court and the court clerk not involving the parties in collecting the results.

The appellant further challenged the DNA report stating that when he was given a copy, the report had a stamp which does not indicate the location of the office of the CGC. Further the report did not have any emblem and that the report was in Kiswahili language while the parties filed their pleadings in English language and court procedures were in English. The appellant also complained that he was not given a copy of the result so that he could prepare his defence. That, his submissions

were not considered by the trial court and he even asked for the DNA test to be repeated but the prayer was not granted.

In reply, the respondent was brief, she explained that she was ready to repeat the test if the court so orders. She conceded that the CGC informed them that they will both go to collect the report but she does not why the court clerk decided to collect the report by himself. She also conceded that the trial magistrate had asked them to stay outside the court and then the court clerk brought the report, she however did not see where he came from. That, she was never issued the report and she has never seen it before. That was the end of her submissions.

The court had further questions to the parties and invited them for more clarification. The appellant, agreed to have sexual relations with the respondent and that they went to the social welfare office who told them that there is a difference of two months between the time she stated she was pregnant and delivery. Meanwhile, the respondent stated that they did not talk about the issue of months at the social welfare office and that the appellant had told her that he did not want the baby because he already had a family. She also stated that they started their relationship in September, 2020 and child was born in July, 2021.

Having appreciated the parties' submissions, and records herein, the issue is whether the appeal has merit.

As mentioned above, the main objection raised by the appellant is that he is not the father of the child and he is challenging the report issued by the Chief Government Chemist, the modality of submitting the report at the court and the contents therein.

Having gone through the trial court's proceedings and the contested Chief Government Chemist' report, I have observed that, once the appellant had objected being the father of the child, his prayer for paternity test was granted, both parties went for collection of samples and later the results were positive which was not in the appellants' interest.

Starting with the manner which the report was submitted to the court, I have gone through the report, contrary to what the appellant is alleging, it has an emblem and stamp of the Chief Government Chemist and the address is '*Mamlaka ya maabara ya Mkemia Mkuu'* which is the Kiswahili version of the office of the Chief Government Chemist, 05 Barabara ya Barack Obama, S.L.P 164 Dar es Salaam, email gcla@gcla.go.tz, fax: 255-22-2113320 with telephone no. 255-22-2113383/4 and, the report has the reference number MK/F30/26/ VOLVI/252/2022/1 dated 14.2.2022. The contents as mentioned above stated that the appellant has 99.99% chances of being the father to the child.

The challenge regarding the language of the report, I find it not substantial, because what matters is the content of the report not the language. Besides, both English and Kiswahili are Tanzania's official languages therefore an institution can rightly issue its report in Kiswahili language.

Further, there is nowhere in the records which suggests that the court had intention or interest in forging or interference with the results or that the respondent had access to the CGC office to influence the results.

The court in issuing it's decision was also guided by the Social Welfare report which showed that the respondent do not have any source of income and that the appellant was not cooperative to the social welfare officer.

Secondly, with regard to the content of the report, the appellant did not explain if he was challenging the substance of the report or the competency of the issuing authority or any other technical part of the report, he was rather challenging the format and production of the report.

I must state that, being the scientific report, the appellant cannot challenge it by mere words. It should be noted that this CGC DNA report was issued following a court order, and it is not disputed that the samples were taken from the appellant and respondent even the names featuring

on the report are of the appellant and the respondent. Therefore, it was correct for the court clerk to collect the report and bring it to the court.

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 which may obstruct dispensation of justice.

Furthermore**, 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 cannot be seen to have been considered if the court will entertain mere allegations vis-a -vis scientific reports.

It is also trite law that he who alleges must prove, that he who wants the court to give verdict in his favour on a certain right or liability depending on existence of certain facts must prove that the same do exist as held in the case **Caritas Kigoma v K. G. Dewsi Ltd. Civil Appeal No. 47 of 2004.** The appellant has failed to address this court on the validity of the alleged doubts in the contents of the DNA report which would lead the court to allow his appeal. The mere fact that the DNA report is in Kiswahili language or that the report was submitted by court clerk does not by itself create any doubt in the subsequent DNA report which was conclusively conducted at the request of the appellant himself.

Finally, this court finds no merit on the grounds of appeal. Accordingly, the appeal is hereby dismissed in its entirety. As for the nature of the case each party should bear own costs.

It is ordered.

Right of appeal explained.

DATED at **MWANZA** this 12th day of September, 2022.

L.J. ITEMBA

JUDGE

Judgement delivered under my hand and seal of the court in chambers in presence of both parties and Mr. Ignas, RMA.

THE HIGH COURT OF TANZANIA MWANZA

L.J. ITEMBA

JUDGE

12/9/2022