

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

AT DAR ES SALAAM

CIVIL APPEAL NO. 308 OF 2021

**(Originating from Misc. Civil Appl No. 38/2021 at Juvenile Court Kisutu at
Dar es Salaam before Hon. D.J. MSOFFE – RM)**

AMINI RASHID MSABILO.....APPLICANT

VERSUS

REHEMA AUSI.....RESPONDENT

JUDGMENT

MRUMA,J.

This appeal arises from the decision of the Juvenile Court of Dar es Salaam at Kisutu in Miscellaneous Civil Application No. 38 of 2021 which originated from the decision of the same court in Miscellaneous Civil Application No. 13 of 2021 which originated from Civil Application No. 149 of 2021.

In Civil Application No. 149 of 2021 the present Respondent Rehema AUSI successfully applied for orders of maintenance of a child Busaila Amini Rashid born on 7th December 2016.

Following the maintenance order, the Appellant herein instituted Miscellaneous Civil Application No. 13 of 2021 in same Court seeking for access order to enable him to have access to his child who was staying with her mother the Respondent herein. The Juvenile Court granted the relief sought by allowing the Appellant to have right of access twice every month. Apparently the Respondent denied the Appellant to have access to the child as ordered by the court which prompted the filing of Miscellaneous Civil Application No. 38 seeking for enforcement of access order granted in his favour in Miscellaneous Civil Application No. 38 seeking for enforcement of access order granted in his favour in Miscellaneous Civil Application No. 13 of 2021. In its ruling dated 13th August, 2021 the Juvenile Court ordered the Respondent to allow the Appellant access to his child.

The Appellant was aggrieved and has appealed to this court on the following grounds;

1. That the court grossly erred in law and facts to order the Respondent to comply with the court order while she had already violated it.
2. That, the court grossly erred in law and fact by failure to properly analyse the reasons grounds of the Appellant's

application and hence arrived to unjust and unfair decision.

3. That the court erred in law and fact for not taking into consideration the evidence of the Appellant support of application.
4. That the Court grossly erred in law and in fact for not taking consideration the evidence of the appellant in support of the Application.
5. That the Court grossly erred in law and fact for not carefully considering the affidavit affirmed by the Appellant in support of the application.
6. That, the trial court grossly erred in law by delivering a vague decision.

Before this court the Appellant was represented by Ms. Judith Kyamba, learned advocated while the Respondent appeared in person and was not represented. The appeal was argued by way of written submission.

As correctly submitted by both parties enforcement of access ordered like any other order made under the Law of Child (Juvenile Court

Procedure) Rule 2016 is a legal right as provided for under Rule 81(1) of the Rule which provides that:

"An application may be made to the court for enforcement of an order under this part where a party has failed to comply with the terms of the order as set out in JCR Form No. 9 in the third schedule."

An application for enforcement of an order is made where, like in the present case a party has failed to comply with the term. Such application cannot be made where there is compliance. The main purpose of making such an application is to have the order complied with. That is what the Appellant had applied for and an order to compel the Respondent was passed, thus it was a misconception for the Appellant to lodge this appeal.

Under Rule 81(2) of the Law of Child /Juvenile Court Procedure) Rule court has discretion to vary the order. The Juvenile Court opted not to use such discretion to vary the order and I think properly so taking into consideration the fact that the child the subject of these proceedings is a female child who was born 7th December 2016 therefore below 10 years of age. Rule 77(1) (a) of the Rules requires court in determining to grant

an application for access have regard to the best interest of the child. The best interest of a female child of below 18 years of age is to be in the custody of the mother unless there are peculiar circumstances which will necessitate to put her under the custody of her father or any other person. It is also the best interest of the child that she be visited by her father as was ordered by the Juvenile Court.

In view of what I have said above, I therefore dismiss the appeal in its entirety. Each party shall bear own costs.

Order accordingly.




A.R.MRUMA

JUDGE

29/9/2022