

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR-ES-SALAAM DISTRICT REGISTRY)

AT DAR-ES-SALAAM

MISCELLANEOUS CIVIL APPLICATION NO. 317 OF 2022

(Originating from Misc. Civil Application No. 522 of 2016)

IN THE MATTER OF THE LAW OF THE CHILD ACT, CAP. 13 OF 2019

AND

**IN THE MATTER OF AN APPLICATION FOR AN ORDER FOR REVOCATION OF
CUSTODY BY HAPPY JAPHET KWILABYA**

AND

IN THE MATTER OF AN ORDER FOR REVOCATION OF CUSTODY OF B. I.

MJAWA

HAPPY JAPHET KWILABYA PETITIONER

VERSUS

BERTHA MJAWA RESPONDENT

RULING

Date: 18/04 & 05/06/2023

NKWABI, J.:

On 14th day of December, 2016, this Court, granted an application ex-parte filed by the respondent in this application. The respondent, had then sought custody of an infant child of the applicant which was, in the best interest of the infant child, granted as the child had been neglected by her parents which resulted into affecting her health and could not attend school. Now, one of her parents, her mother, is seeking revocation of that order.

The applicant herein urges this Court to revoke the custody of the infant child from the respondent as at the time of the grant of custody, she was attending school thus, she could not take care of her child as she and her husband were unemployed. Currently, she is employed with Rombo District Council as village executive officer. She has thus, brought this petition asking for the following orders:

- i. This Court be pleased to grant an order for revocation of custody of the said B. I. Mjawa given to the respondent.
- ii. That this Court be pleased to grant an order for the custody of B. I. Mjawa to the petitioner.
- iii. That costs of this petition be borne by the respondent.
- iv. That such further and other orders as the nature of the case may require.

The petition was heard by way of written submissions. Ms. Nancy J. Moshia, learned counsel drew and filed the submissions in support of the petition while Mr. Alexander Roudossakis, learned counsel drew and filed submission in reply. No rejoinder submission was filed.

Ms. Mosha while backed by a flurry of case laws asserted that the petitioner is now capable of taking full responsibility as a mother now that she is employed and she completed studies. She cited section 37(3) of the Law of the Child Act Cap. 13 R.E. 2019 for the revocation and **Halima Kahema v. Jayantilal G. Karia** [1987] TLR 147 HC where it was stated that:

"In this case it appears highly probable that indeed there are some material changes in favour of the appellant mother. This is because she is now ready to take the child instead of dumping it at her parents. And moreover, she has secured her own accommodation at her new station in Mwanza and thirdly it has all along been conceded since the trial commenced that she is gainfully employed in the government with a reasonable salary."

Against the petition, it was submitted that not only financial difficulties but also lifestyle of violent relationship led to their (parents of the infant child) separation which still poses a very high risk to the child's upbringing since the violence persists even today. Hence the petitioner and child's father are psychologically and mentally incapable of resuming their parental duties at this point. The respondent implored this Court to consider the best interest

of the child. Mr. Roudossakis **cited Rajab Shabani Mwanga v. Lilian Richard Haule**, Civil Appeal No. 54 of 2022 HC (unreported) but did not provide a copy. He also referred this Court to **Rosy Jacob v. Jacob A. Chakramakkal** (1973) 1 SCC 840 where the Supreme Court of India had these to say:

"... The children are not mere chattels: or are they mere play things for their parents. Absolute right of parents over the destinies and the lives of their children has, in the modern changed social conditions, yielded to the consideration of their welfare as human beings so that they may grow up in a normal balanced manner to be useful members of the society and the guardian Court in case of a dispute between the mother and the father, is expected to strike a just and proper balance between the requirements of welfare of the minor children and the rights of their respective parents over them."

It is prayed for the respondent that the order of custody of the child to the respondent be maintained because it is in the interest of the child until the

petitioner and her co-parent have resolved their differences and proved that they are capable and able of raising the child.

I have carefully considered this petition, the reply to the petition and the submissions of both counsel. It is common place that custody of a child ought to be granted in the best interest of the child. I agree that it is high time that the infant child be in the custody of her mother, the applicant, now that the circumstances present during the grant and the circumstances that are currently, the petitioner has the ability to maintain the child and send her to school. It is in the best interest of the child to be in the custody of her mother rather than her grandmother.


I accept that the reason for the child to be in the custody of her grandmother was that her mother was attending school and both parents were not taking care of the child. Now she is employed and therefore earning salary. The respondent is speculating that if the custody of the child will be in her mother, the petitioner, then it will increase the conflict between the petitioner and the father of the child. I reject that view because, in the first place, the child is not a bargaining chip. Secondly, there is no perfect family and it seems that the applicant is separated from the father of the child.

In the circumstances, I revoke the order of the custody of the infant child granted to its grandmother (the respondent) and place the custody of the child to its mother, the petitioner, because the circumstances have changed as indicated herein above.

In end, I find that the petition is merited and it is granted. In the circumstances of this petition that it is a family matter, I make no orders as to costs.

It is so ordered.

DATED at **DAR-ES-SALAAM** this 5th day of June, 2023.



J. F. NKWABI
JUDGE

