

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(DODOMA DISTRICT REGISTRY)**

**AT DODOMA**

**DC CIVIL APPEAL NO. 21 OF 2023**

*(Originating from Misc. Civil Application No. 02 of 2023 before the Juvenile Court of Dodoma at  
the Bahi)*

**KHADIJA KHAMIS KULEMBA..... APPELLANT**

**VERSUS**

**DAVID CHARLES MGASSA..... RESPONDENT**

**CONSENT JUDGMENT**

*Date of last order: 14/2/2024*

*Date of Judgment: 20/3/2024*

**KHALFAN, J.**

Parties herein contracted customary marriage. They were blessed with one female issue whose name shall be concealed in this judgment. The said issue is now aged seven years old. Before the trial court, the respondent alleged that sometime in 09/08/2015, he got an accident in which he attended medical treatment for a long time. It was at that time the appellant and the issue moved away. He made effort for the appellant to return, but in vain.

At the centre of the dispute between parties is who should have the custody of the issue of marriage. The respondent therefore filed an



application before the Juvenile Court of Dodoma sitting at Bahi (hereinafter referred to as the trial court) seeking for an order for custody of the issue. At the trial court, each party claimed to be a fit person to be awarded the custody of the issue. However, for the purposes of this matter, I will not reproduce the arguments of the parties.

After hearing the parties, the trial court was convinced that the respondent was a fit person to be awarded the custody of the issue while the appellant was granted the right to access, visiting and staying with the issue whenever she desired unless such arrangement interfered with her school.

The appellant was aggrieved with decision of the trial court hence she preferred the instant appeal with the following grounds of appeal:

- 1. That, the Trial Court erred in law and fact for failure to consider the position of the law that where the natural love and affection of the mother is not outweighed by other elements constituting the best interest of the suit child, the said suit child shall be placed under its*

*mother so that she can continue to enjoy her natural love and affection.*

- 2. That, the Trial Court erred in law and fact for its failure to consider the sex of the suit child (female) which calls for grant of custody in favour of the Appellant (Mother) and not the Respondent (Father) considering the suit child's upcoming biological development accompanied with adulthood.*
- 3. That, the Trial Court erred in law and fact for failure to consider that by placing the suit child to a stepmother she shall experience difficulties to live with a stepmother while there is no proof of any social misconducts of the part of the Appellant who is capable socially and economically to take care of her suit child.*
- 4. That, the Trial Court erred in law and fact for failure to consider that lack of confidence, trauma and phobia indicated in the Social Welfare Officer Report on the part of the suit child was solely caused by the*



*Respondent's acts of forcefully eloping the suit child from School environment between 20th January, 2023 and 1<sup>st</sup> February, 2023 when he returned her to Maswa District with the aid of the Police Force.*

- 5. That, the Trial Court erred in law and fact for failure to consider that the Respondent has never provided for the child and it is only the Appellant who has been providing for the suit child's educational, health and social needs without the help of the Respondent. In addition, the Trial Court has failed to consider that the Respondent has never lived with the suit child for more than 4 months and 10 days.*
- 6. That, the Trial Court erred in law and fact for relying on a faulty report of the social welfare officer which features professional medical opinion and findings without proof that the suit child was examined by a professional medical officer; and without affording the parties opportunity to cross examine the said officer who prepared the report.*



*7. That, the Trial Court erred in law and fact for relying on a faulty report of the social welfare officer which does not show the suit child's views despite the fact that the child was interviewed at School in the presence of her teacher who gave a different account of opinion of the suit child's views in the said interview.*

Before hearing of the appeal at hand had commenced, parties and their advocates filed in court a settlement deed in which several aspects were agreed on between the parties. Of importance, the key aspects agreed by the parties are as follows: the appellant shall have sole custody of the issue. The appellant shall permit the respondent full access and visiting rights over the issue and upon communication with the appellant.

Parties further agreed that the respondent shall have full access to visit the issue at school without interfering with the studies and subject to the school arrangements. It was further agreed that, the respondent may have the rights to be with the issue during closure of school studies and during school holidays as per annual school calendar. Upon closure of school studies as per its calendar, the respondent may take the issue



before the Dodoma Social Welfare Office upon one (1) week prior to communication with the appellant.

Furthermore, parties agreed in their individual capacity, not to shift the issue from one school to another including her school living arrangement (day or boarding arrangements) without the consent of the other party (parent). Upon being enrolled into secondary education level, parties shall ensure that the issue attends her studies from the said school boarding facilities.

Finally, it was agreed that, the respondent shall contribute fifty per centum (50%) of the school fees and shall further contribute one hundred per centum (100%) of the cost of NHIF medical insurance for the issue.

With the said settlement deed, this court finds it appropriate to mark the matter settled as per the settlement deed and each party to bear its own costs.

It is so ordered.



**F. R. KHALFAN**

**JUDGE**

**20/3/2024**