



THE JUDICIARY OF TANZANIA

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA AT KIGOMA

(CORAM: HON. AUGUSTINE RWIZILE)

CIVIL REFERENCE NO. 1 OF 2023

**STELLA SHABANI MNYANDA COMPLAINANT / APPELLANT / APPLICANT /
PLAINTIFF**

VERSUS

BATHROME MORICE NKORONGO RESPONDENT / DEFENDANT

RULING

Fly Notes

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Facts

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Ratio Decidendi

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5th of April 2024

Hon. RWIZILE.:

Mr. Sadiki learned counsel for the respondent submitted that the application is bad in law for being preferred under the wrong procedure. According to him, Rule 123(1) of the Juvenile Court Rules (JCR) provides only one remedy of appealing against the decision of the Juvenile Court. There is no dispute, he added, the case was before a Juvenile Court. According to him, any subsequent orders for enforcement fall within the meaning of the rules and therefore the CPC does not apply. He further argued, that the decision has been challenged by way of reference and therefore bad in law because the CPC does not apply. The enabling provisions, it was his view, are in the CPC which did not envisage orders from the Juvenile Court because it has its own rules. He prayed the application be dismissed.

In replying, Mr. Mwangati learned counsel for the applicant stated that the Juvenile Court before Hon. Mwakitalu-RM made a decision on 30.09.2022 which was not contested. The applicant, he added was satisfied with it. According to him, Hon. Mwakitalu-RM decided that a child be taken to a boarding school here in Kigoma. And further, if not so, let the child be placed under the custody of the mother, the applicant. While waiting for the enforcement of that decision, it was further argued, that an application was made for custody in execution of the order. He argued further that the applicant objected based on the ground that; it was not for the same to deal with



the decision that was previously made.

The decision, he added, was contrary to the previous decision of the same Court. The learned counsel argued that it was found out that because it was enforcement, the only remedy was to challenge it by way of reference to this court under the CPC. It was his opinion that the application is a proper forum and it is not prejudicial to the decision made before regarding the rights of the parties.

Mr. Sadiki rejoined that, the decision being challenged is attached and page 4 of the ruling clearly shows two orders were made and therefore, they are the same being challenged. He insisted that the proper forum in that respect is an appeal and not by way of reference. It is not true in his view, that the application impugned here is not for custody. The application was on access and it was filed under form JCR.9. made under rule 80(1) of JCR. The only way for the respondent to enforce the decision was to apply for access to take that child to school. Cementing his argument further, he said, the order by Hon. Momba was rather enforcing the order made by Hon. Mwakitalu-RM. In his opinion, the order is appealable under the rules. He concluded that Rules of procedure are a handmaid of justice and prayed, that the application be dismissed.

The point of objection raised touches on a pertinent issue in Juvenile Justice in Tanzania. It is plain, that the coming into force of the Law of Child Act, Cap 13 aimed at creating a separate system through which courts in this land have to deal with issues involving children in contact and/or in conflict with the law. In 2016, however, the efforts were cemented by the formulation of the Law of the Child (Juvenile Court Procedure) Rules, 2016, referred to as Juvenile Court Rules. GN No. 182 of 2016. The establishment of these rules, after all, did not apply to courts other than the Juvenile Courts. It brought an impression that a child is only protected by these rules when and only when, he appears before a Juvenile Court contrary to the intention, spirit, and letters of the establishment of the Law of the Child Act. Not until 2019, through the adoption order, GN No. 54 of 2019, when the Juvenile Court Rules were adopted by the Chief Justice to apply to the High Court.

It follows therefrom that Juvenile Court Rules apply in all matters involving children. The rationale behind this shift was to create child-friendly practices and therefore jurisprudence in all matters involving children in courts. This is the reason why the Law of the Child Act and Juvenile Court Rules are specific and so apply to children's cases.

Before me is an application for reference challenging the decision of the Juvenile Court in the execution of the custody and access order. Preliminary Objection has been raised that the forum to access this court from the Juvenile Court is by way of appeal. The respondent argued that the application conflicts with rule 123(1) of the Rules.

I think, Mr. Sadiki advocate for the respondent is right. I think so because, when there is a specific law courts are limited to applying the general law unless there is an express provision directing so. And in most cases, general laws apply where there is a lacuna. It is therefore clear to me that because Juvenile Court Rules direct how enforcement of Juvenile Court orders should be done, one could not apply the Civil Procedure Code except for instances, where the rules invite application of the Civil Procedure Code in terms of rule 87(3) of the rules, where the court seeks to enforce maintenance orders which plainly states that where in any maintenance proceeding, the court has passed an order for the payment of any money, such order may be enforced in the same manner as a



similar order passed in any civil suit under the Code, and the provisions of the Code, relating to the execution of such orders shall apply mutatis mutandis to an order for payment of money in any maintenance proceedings.

In my considered view, it is only in this incidence that the Civil Procedure Code applies in the enforcement of the orders of the court. It was wrong for the applicant to approach this court by way of reference in terms of XL1(1) (2), section 38(1), and section 95 of the CPC. The enabling main provision which invites reference under XL1 has been misapplied because no doubt was entertained by the court in the cause of hearing the application being challenged. I, therefore, entertain doubt if the applicant was in the right way to come to this court in the manner she did.

Rule 123 of the Rules provides in certain terms that whoever is aggrieved by a finding, sentence, or order made or passed, has fourteen days in which to enter an appeal. Therefore, the way through which to access this court from the Juvenile is stated under the rules. I therefore agree that the preliminary objection raised has merit. The objection is sustained. The application is struck out. Each party is to bear its costs.

Dated at KIGOMA ZONE this 5th of April 2024.

**AUGUSTINE RWIZILE
JUDGE OF THE HIGH COURT**

