

**IN THE HIGH COURT OF TANZANIA  
AT ARUSHA**

**MISC. CIVIL APPLICATION NO. 5 OF 2012**  
(C/F Matrimonial Cause No. 1 of 2012 before the High Court of  
Tanzania at Arusha)

**BETWEEN**

**JENIPHER DANSTAR ISAKWASE ..... APPLICANT**

**AND**

**DANSTAR ISAKWASE NG'UNDA ..... RESPONDENT**

Date of last order: 17/08/2012

Date of Ruling: 21/09/2012

**RULING**

**A.C. NYERERE, J.**

This ruling emanates from a miscellaneous civil application filed by the applicant herein vide the provisions of Rules 8 and 32 of the Matrimonial Proceedings Rules 1971 and section 115(1) (a), (b) & (c); section 130 (1) (c) of the Law of Marriage Act [CAP. 29 R.E, 2002] and Order XXXVI Rule 6(1) (a) of the Civil Procedure Code, [CAP. 33 R.E, 2002] for the following orders;

- (a) That, while hearing and disposal of the petition is still pending; this Honourable Court be pleased to order the respondent to provide maintenance to the Petitioner and three issues of the marriage.
- (b) That, this Honourable Court be pleased to Order the respondent to return personal wearing apparels of the Petitioner and children taken from the matrimonial house to unknown place.
- (c) That, this Honourable Court be pleased to make an order to attach the matrimonial properties listed in annexure 'A' pending final disposal of the petition.
- (d) Costs be provided for.

The chamber summons was supported by an affidavit sworn by the applicant herein with a counter affidavit sworn by the respondent's learned counsel one Mr. John Faustine Materu in reply. In this miscellaneous application, the applicant was represented by Mrs. Christina Kimale learned counsel whereas Mr. Materu learned counsel appeared for the respondent.

In submission; Mrs. Kimale learned counsel submitted that after their marriage turning sour, the respondent herein forced the applicant out of their matrimonial home also that the respondent removed the applicant's properties including the applicant's and their children's wearing apparels and consequently; rent the said matrimonial home to some tenants.

It was the applicant's submission that the respondent has refused maintenance in terms of food, accommodation and clothing to both the applicant and the issues born from their relation in contravention of the provisions of section 129(1) of the Law of Marriage Act, [CAP. 29 R.E, 2002] thus necessitating the applicant and her issues for the first four months from November, 2011 to February, 2012 to live in a small shop where she was selling medicine.

The applicant's learned counsel added that, later; the applicant was barred from dual use of the said room (by an anonymous person) that is for both residential and selling medicine purposes. The applicant's learned counsel further informed the Court that the applicant was then accorded an accommodation from her friends for the next three (3) months. From the above, the applicant thus prayed for an accommodation in their jointly acquired house situate in Ilklorit village pending final hearing and disposal of the petition before this Court.

Further, it was the applicant's prayer for the respondent to issue maintenance vide the provisions of section 63(a) of the Law of Marriage Act (supra) that reads;

*"Except where the parties are separated by agreement or by decree of the court and subject to any subsisting order of the court–*

*(a) it shall be the duty of every husband to maintain his wife or wives and to provide them with such accommodation, clothing and food as may be reasonable having regard to his means and station in life".*

Therefore; it was also the applicant's prayer for the respondent to maintain the applicant vide the provisions of section 115(1)(a), (b) & (c) and against the issues in compliance to the provisions of section 129(1) all of the Law of Marriage Act (supra) pending final determination of the pending proceedings. Further, the applicant argued that the applicant has been deserted by the respondent for about three (3) years now and that the respondent has been enjoying the fruits of their jointly acquired properties leaving the applicant suffering.

Invoking the provisions of section 130(1) of the Law of Marriage Act (supra), the applicant's learned counsel prayed for this Court to issue an order of maintenance of the children born from their relation pending final determination of the main cause.

In rebuttal; the respondent submitted that there was no evidence adduced by the applicant to substantiate her claims that the respondent is disposing of the properties acquired during subsistence of their marriage pending final determination of the pending case.

It was the respondent's further submission that the applicant has refused to join and live with the respondent herein in their house located in Ilkiurei within Arumeru District in Arusha Region adding that the house located in Kimandolu which they occupied before, belongs to one Induandumi Isakwase whereas the respondent was ordered to vacate the same via an Order of the District Land and Housing Tribunal of Arusha in Land Application No. 54 of 2010.

The respondent further informed the Court that he owns three (3) houses from the list annexed annexture 'A' in the applicant's affidavit and that the two houses located in Kimandolu have been rented and that what is raised from the said rented house provide school fees for the issues born from the relation with some other two children not born from the couple.

The respondent further informed the Court that he is ready for the applicant herein to occupy one room among the two rooms in that house located in Ilkiurei village in Arusha District pending final determination of the pending main cause. In respect of the wearing apparels, the respondent denied to have taken them stating that the said wearing apparels are in the house situate in Ilkiurei village.

The respondent's learned counsel added that the applicant is running two medical stores in Kwa Ngulelo area and Mirerani in Simanjiro both acquired from a capital raised by the respondent whereas all the income from those investments are taken and spent by the applicant. Further; the applicant's

learned counsel submitted that the applicant is receiving rent from a matrimonial house situate in Mirerani and from another one room in a house situate in Kimandolu.

It was the respondent's submission that from the above sources, the applicant earns enough income for her maintenance and their daughter one LOVE DANSTAR NG'UNDA adding that the remaining children are in boarding school though during leave, those in boarding schools stay with the applicant.

In rejoinder; the applicant submitted that the respondent has failed to substantiate on how the properties in list 'A' of the applicant's affidavit should not be attached apart from the evasive denials that the said properties do not belong to the parties herein as jointly acquired properties. The applicant added that the said house situate in Ilkiurei has never been a matrimonial house and that the respondent has never lived in.

Further, the applicant added that she is not ready to occupy the house situate in Ilkiurei for security purposes. Finally; the applicant prayed for the respondent to provide a sum of Tshs. 200,000/= monthly through Court and a prayer for safeguard of the applicant's rights which stand jeopardized as the parties herein live in separation.

To this Court, the respondent is not disputing the fact that the couple own several properties jointly acquired during subsistence of their marriage and that the children born from their relation, one lives with the applicant whereas two are in boarding schools but they also live with the applicant during their leave (school vacation).

Though the applicant has faulted owning the alleged two medical stores, yet; reasonably and within balance of probabilities, the applicant failed to necessarily account against the allegations of owning two medical stores raised from a jointly acquired capital during subsistence of their marriage and the allegations of collecting rent from some of the rooms jointly acquired by the parties herein during good days of their marriage.

Additionally; the applicant did not dispute the fact that it is the respondent who has been paying school fees for the children. Likewise, from the above; the applicant is not currently in need of accommodation as it did not feature in both her affidavit and the written submissions both in chief and in rejoinder both for herself and her three children meaning the one she lived with that is LOVE and the rest who are in boarding schools especially when they are back for their holidays.

Also, though the applicant has not shown as how she came out with the prayed figure of Tshs. 200,000/= for maintenance, yet; to this Court, since the assertions of the couple owning various properties as listed in

annexture 'A' as well as the allegations of the applicant collecting rents from some of the jointly acquired properties as well as the applicant owning two medical stores raised from a capital jointly acquired during subsistence of the marriage involving the parties herein are yet to be determined by this Court, this Court is satisfied that the alleged claimed Tshs. 200,000/= suffices to subsidize in catering for accommodation and or medication (if any) and food pending final determination of the same.

Reasons wherefore; this Court orders for the respondent to pay a sum of Tshs. 200,000/= per month for maintenance of both the applicant and the three (3) issues born from the couple pending final determination of the main cause. Further; though the respondent has argued the properties listed in annexture 'A' do not form part of the properties belonging to the couple, yet; this Court make orders for the parties herein to maintain *status quo* of the said properties until final determination of the main cause.

Lastly; since the respondent has not disputed the allegations that there are some wearing apparels in the Ilkiurei house, this Court makes orders for all such wearing apparels for the applicant and or the children born from the couple to be handled over to the applicant in the soonest time possible. It matters not that the said apparels are in possession or control of the applicant in the house situate in the Ilkiurei house or elsewhere.

Also; the respondent is hereby ordered to handle over the said sum of money amounting to Tshs.200,000/= per month and the wearing apparels



in Court with the said sum paid in Court prior to end of each month pending final determination of the main cause.


Order accordingly.

**Sgd:- A.C. NYERERE  
JUDGE  
21/09/2012**

Ruling delivered this 21<sup>st</sup> day of September, 2012 in presence of Mrs. Kimale Learned Counsel for Applicant and Applicant present in presence of Mr. Materu Learned Counsel for Respondent.

**Sgd:- A.C. NYERERE  
JUDGE  
21/09/2012**

**I hereby certify this to be a true copy of the original.**

  
**W. R. MASHAURI**  
**DISTRICT REGISTRAR**  
24.09.2012  
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