

IN THE HIGH COURT OF THE UNITED REPUBLIC TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM
MISC. CIVIL APPLICATION NO. 138 OF 2019

(Original matrimonial Cause No. No. 3 of 2018)

AMINA ABDALLAH.....APPLICANT

VERSUS

HALIFA ATHUMANI MAGINA.....RESPONDENT

RULING

Date of last order 15/10/2019

Date of Ruling 28/10/2019

NGWALA, J.

The applicant is seeking for orders against the respondent pending the final determination of the Petition for Divorce in Matrimonial Cause No. 3 of 2018. The prayers made by way of chamber summons in terms of sections 81 and 63(a), section 115(1)(c), section 138(1)(i) and (iii) of the Law of Marriage Act,1971 and Rules 8 & 32(1) of the Law of Marriage (Matrimonial Proceedings) Rules 1971 are:-

- (a) The respondent provide maintenance to the Applicant and their three (3) children of marriage.

- (b) The Respondent to pay school fees and medical expenses for the three children of their marriage.
- (c) Injunction order to prevent the respondent from disposing any of the listed matrimonial properties.
- (d) The respondent to unlock the doors and handover the applicant's belongings.

The prayers were supported by an affidavit deponed by the applicant, who was represented by Mr. Rajabu Mrindoko, learned advocate. The respondent was represented by Mr. Armando Swenya, learned advocate.

It was submitted by the applicant that, since October, 2018, the respondent has neglected maintaining the applicant and their three issues of marriage. The respondent is not providing clothing, food allowance; school and transport fees together with medical expenses. The appellant denied the assertion by the respondent. He maintained that he has been providing maintenance to the tune of Tshs. 300,000/= per month through his elder son.

It was submitted further that, the respondent has disposed some of the properties while the matter is pending before the court. He

prayed for the court to grant an injunction restraining the respondent from disposing of matrimonial properties.

It was further submitted that, the respondent has locked the Applicants' personal effects and left with the key for unknown reasons. For those reasons he prayed for the above mentioned orders.

Mr. Armando Sweya resisted the prayers on the ground that, the respondent has been paying maintenance to the tune of Tshs. 300,000/= per month by using the phone of Arafa Halifa. The medical expenses too have been provided by the respondent. The prayer for granting interim Injunction order was resisted. The respondent argued that, the applicant was not specific on which properties had been restrained.

In rejoinder the counsel for the Applicant stressed the applicant be granted the orders sought pending the final determination of the suit because it is their entitlement.

In view of the foregoing submissions, I tend to agree with the counsel for the Applicant because it is quite clear that, the parties are still husband and wife. The Applicant is still entitled to be maintained in accordance with the provision of **Section 115 (1) (c) of the Law of Marriage Act, 1971**, which confers the court

with mandate to order maintenance for spouse during the course of any matrimonial proceedings.

The children of their marriage are also entitled to maintenance as provided in mandatory terms that, a parent or guardian shall have the duty to maintain a child. In this respect, the respondent is compelled by the law to maintain the children. **Section 8(1), (2) & (3) of The Law of Child Act, No. 21 of 2009** provides;

"8.-(1) It shall be the duty of a parent, guardian or any other person having custody of a child to maintain that child in particular, that duty gives the child the right to -

- (a) food;*
- (b) shelter;*
- (c) clothing;*
- (d) medical care including immunization;*
- (e) education and guidance;*
- (f) liberty; and*
- (g) right to play and leisure.*

(2) A person shall not deprive a child access to education, immunisation, food, clothing, shelter, health and medical care or any other thing required for his development.

(3) A person shall not deny a child medical care by reason of religious or other beliefs".

For this reason, it is hereby ordered that, the respondent shall provide maintenance to the tune of Tshs. 300,000/= per month from the date of this Ruling, till finalisation of the main suit.

Regarding the matrimonial properties which are the subject of this courts' determination in the main suit, an interim order is granted in view of the case of **Atilio v. Mbowe [1969] HCD 284** which sets out preconditions a litigant has to meet before the court exercises its discretion to grant interim orders namely:- Existence of serious question to be tried on the facts alleged with the probability of success in the suit, demonstration that the Applicant stands to suffer irreparable loss requiring the courts intervention before the Applicants legal right is established. Proof of greater hardship and mischief suffered by the Applicant if the injunction is not granted than the Respondent will suffer if the order is granted is also another factor.

In consideration of the circumstance and nature of this case, as aforesaid the orders sought are granted as prayed. I make no orders as to costs. That is, each party shall bear its costs.


A. F. Ngwala

JUDGE

28/10/2018

28/10/2019

Coram: A. F. Ngwala

Applicant - Present

For Applicant - Mr. Denis Jacob Julius (Advocate)

Respondent - Absent

For Respondent - Absent

Mr. Denis Jacob Julius (Advocate): I hold the brief of Mr. Mrindoko for the applicant.

Court: Ruling delivered in court in the presence of the Applicant and her counsel and in the absence of the Respondent.

Court: Right of Appeal to Court of Appeal of Tanzania explained.



A. F. Ngwala

JUDGE

28/10/2018