

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM

CIVIL APPEAL NO. 94 OF 2018

(Appeal the Ruling and Drawn Order of the District Court of Kinondoni at Kinondoni, Dar Es Salaam (Hon. A.A. Mwingira, RM) dated 11th July, 2016 in Miscellaneous Cause No. 14/2013)

Donatian L. Katabaro -----APPELLANT

VERSUS

1. Hellen Katabaro

2. Lawrence K. Katabaro-----

RESPONDENTS

JUDGEMENT

Date of last order: 09.06.2020

Date of Judgement: 06.10.2020

EBRAHIM, J.:

The appellant herein has instituted the instant appeal questioning the jurisdiction of the trial court in entertaining the application; faulting the adjudication of the matter by the District Court on the parentage of the 2nd respondent whilst there was no leave granted; and that the ruling was delivered in the absence of the appellant.

The application was argued by way of written submission. The Appellant was represented by Mr. Juventus Ngowi and the Respondents preferred the services of Mr. Macarious Tairo.

In determining the grounds of appeal, I shall not reproduce the submissions by the parties as they are already in the record. I shall however refer to them in the course of addressing substantive issues.

Referring to **Section 97 (1) of the Law of Child Act, Act No. 21 of 2009 ("The Act")** which establishes Juvenile Court, Counsel for the Appellant argued that under **section 3** the word "court" has been defined under item **(c) on matters of** parentage to be Juvenile Court. He argued therefore that that since the application was brought under the provisions of **section 34(1)(a)(b)(2) of the Act**, the District Court of Kinondoni had no jurisdiction to entertain it.

Responding to the issue of jurisdiction, Counsel for the Respondent made reference to **section 99(1) (a) to (h) of the Act** on the procedures in juvenile court and argued that by the time the Respondents filed **Miscellaneous Civil Cause No. 14 of 2013 on 28th March 2013**, the same were not established as they were to be in accordance with the rules to be made by the Chief Justice. Thus, in

accordance to **section 98(2) of the Act** which state that Juvenile Court shall **also** have jurisdiction and exercise powers conferred **upon it by any other written law** then it was correct for the District Court to entertain the matter. He contended that the rules containing the procedures for the juvenile courts were made by the Chief Justice under **section 99(1) of the Child Act on 3rd July, 2014** i.e. **Law of the Child (Juvenile Court Procedure) Rules, 2014, Government Notice No 251 published on 25/07/2014**. He submitted therefore that before the **Child Act**, the operating law was the **Children and Young Persons Act, Cap 13 RE 2002** which defined juvenile court under **section 2 to mean a District Court sitting as prescribed in section 3 (1) and (2)**.

Re-joining on the issue of jurisdiction, Counsel for the Appellant cited the High Court Cases of **Nkupa Tanzania Company Limited Versus NMB Bank Public Company and Another**, Civil Case No. 179 of 2019 (Unreported); and the case of **Yanga Mhogela Versus Buzurizuri Gassoni & Others**, Misc. Land Appeal No. 70 of 2018 (unreported) on the position that any proceeding by a court lacking jurisdiction shall be adjudged a nullity at a later stage. He further referred to the Court of Appeal Case of **Tanzania Revenue Authority Vs Tango Transport Company Limited** (Unreported), Civil Appeal No. 84 of 2009 in its

holding that jurisdiction is the authority which empowers court to decide matters. Hence the District Court had no jurisdiction.

I must state here that I am at one with the vast authorities cited by the Counsel for the Appellant that jurisdiction confers power and/or authority to the judicial body to adjudicate the matter. Nevertheless, before the establishment of the Juvenile Court Rules and Procedure in terms of **Section 99(1) of the Act** i.e. **Law of the Child (Juvenile Court Procedure) Rules, 2014, Government Notice No 251 published on 25/07/2014**, it was still the District Court that had mandate to sit and entertain children matters as a juvenile court in accordance to the governing law which is **Law of the Child Act, Act No. 21 of 2009**. I would therefore hasten at this particular point to agree with the Counsel for the Respondents that by the time the Respondents filed the instant matter, there was yet to be established the rules and procedure for the designated Juvenile Court. Thus, the old existing court on children issues were still dealt at the District Court. Accordingly, I dismiss the first ground of appeal.

However, the attention of this court is caught on the second and third grounds of appeal that the District Court entertained the application

for parentage to the person who is of the age of majority (over 30 years old) contrary to the law; and that the trial court determined the matter without receiving evidence to that effect.

In arguing this point, Counsel for the Appellant submitted that since at the time of making application for parentage the 2nd respondent was 30 years old, he was required under **section 34(2)(c) of the Act** to obtain special leave to file such application. Thus, the trial court erred by proceeding to determine the matter without first granting leave to file application for parentage. Therefore, the application for parentage was incompetent.

Further to that since the court had not granted leave to file application for parentage, and no further hearing was entertained, the trial court erred by determining the matter on the submissions that were geared for application for leave, submitted counsel for the appellant.

On the other hand, Counsel for the respondent relied heavily on the ruling of 14th December 2015 on granting leave to file application for parentage; hence the decision of 25th Feb 2016 of ordering DNA test.

Thereafter he justified the decision of the trial court of 11th July 2016 to be correct.

Section 34. -(1) (e) and (2) (c)of the Act caters for the circumstances of the 2nd Respondent herein to apply to court for an order of parentage subject to obtaining special leave of the court.

Evidently from the position of the law explained above, it is clear that for a party above the age of eighteen years, before filing an application for parentage, such person must first obtain leave of the court. It goes without say that an application for leave is not synonymous with application for parentage as such they cannot be entertained under the same application as it would amount to omnibus application. The filing of application for parentage solely depends on the order of the court of granting such leave.

Initially on 27.08.2015, the trial court rightly directed itself by vacating its previous order and decided to firstly entertain and grant an application for leave to file an application for parentage.

However, it was wrong for the trial court to proceed to entertain an issue of granting application for parentage on **Application no 14/2013**. After obtaining leave vide Application No. 14/2013, the

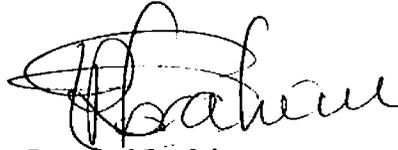
applicant was required to file an application for parentage. It was a major flaunting of procedure in allowing the same application to proceed with the second stage of arguing an application for parentage. By entertaining the prayer for parentage in the same application with three prayers, it amounted to entertaining an omnibus application and at the same time rendering an application for parentage to have been filed prematurely.

That was procedurally incorrect and contrary to the law. Accordingly, I allow this ground of appeal.

This ground of appeal alone is enough to dispose of the instant appeal because the determination of application for parentage was illegally entertained without following the set procedure by the law. In fact, there was no application for parentage before the trial court for consideration. Consequently, I quash and set aside the Ruling and Order of the trial Court dated 11th July, 2016. I also nullify all the proceedings after the grant of leave on 14.12.2015.

All said and done, the appeal is allowed to the extent explained above. Given the fact that the irregularity was partly contributed by the court, I give no order as to costs. Each party to bear its own.

Accordingly ordered.

A handwritten signature in black ink, appearing to read 'R.A. Ebrahim', written in a cursive style.

R.A. Ebrahim

Judge

Dar Es Salaam

05.10.2020