

TANZANIA / JUDGMENT

MISC JUVENILE APPLICATION NO

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1 January 2023

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (KIGOMA SUB-REGISTRY) AT KIGOMA MISCELLANEOUS JUVENILE APPLICATION NO. 28004 OF 2023 KURUTHUM MO SHIRASHID APPLICANT VERSUS AMOS WAMBURA SERIKALI RESPONDENT (Arising from the Judgment and Decree of this Court) (F. K. Manyanda, J.) Dated 19th day of August 2022 In (Juvenile Civil Appeal No. 1 of 2022) RULING Date: 24/07 & 13/08/2024 NKWABI, J.: In the trial Court, the applicant sought to obtain maintenance for the parties' issue at T.shs 150,000/= monthly. She neither claimed for rent nor school fees etc. Upon hearing the parties, the trial court dismissed the application because, it found that the applicant had no clean hands for having a child through an affair while she was married. She was aggrieved. On appeal to the High Court, this Court allowed the appeal and ordered the respondent "to provide maintenance of the suit child J. A. (name withheld by this Court) to the tune of T.shs 150,000/=" On the same date, this Court drew a decree in corresponding words regarding to the maintenance amount that was stated in the judgment. In Juvenile Execution Case No. 2 of 2023 which sought execution at T.shs 3,450,000/= which reckoned maintenance from February 2021 to December 2022 equal to 23 months, the district Court dismissed the application for execution and "upheld the High Court decree" and ordered the respondent to pay T.shs 150,000/= for child maintenance. Under a chamber summons based on section 95 and 96 of the Civil Procedure Code, Cap. 33 R.E. 2019, she has come to this Court with this application seeking the orders of this Court thus:

1. That this Honourable Court be pleased to rectify the clerical error which is omission to state in the judgment and decree in Civil Appeal No. 1 of 2021 in this Honourable Court before his Lordship F. K. Manyanda, J. that, the awarded maintenance of T.shs 150,000/= is monthly payable for J. A. (name withheld by this Court) (the parties' biological female child born on 19/06/2019). ii. Any other order(s) this honourable Court may deem fit and just to grant in the circumstances. The hearing of this application, on merit, was conducted by way of written submissions. The applicant was duly represented by Mr. Sadiki Aliko, 2 learned counsel, while the respondent was represented by Mr. Daniel Rumanyela, a sole learned counsel. I am thankful to them for their submissions. In submission in chief, Mr. Aliko maintained that it was unfortunate when composing the judgment and decree is taken lightly omitted to mention that the awarded amount of T.shs. 150,000/= should be paid monthly, the mistake which is humane

error as judgment composing is done by human being and not angels or a machine hence sometimes prone to the mistakes and that being the case the omission can be corrected by granting this application. He added that it was not the intention of this Court the maintenance to be T.shs 150,000/= once and for all. He explained that the needs of the child are ongoing, thus his lordship could not have ordered maintenance of T.shs 150,000/= once and for all. To back his arguments, Mr. Alikire referred this Court to the case of Victor W. Meena & Another v. Arusha Technical College, Civil Appeal No. 515 of 2020, CAT which cited with approval the case of Sebastian Stephen Minja v. Tanzania Harbours Authority, Civil Application No. 107 of 2000 where it was held that: "... The Court can correct a clerical mistake such as where the word 'trom' instead of the intended word 'tor' had been written or an arithmetical mistake such as the figure '1 08' instead of the intended figure of '1 80' appearing in the judgment. It can also correct an error arising from an accidental that is to say, unintended, slip or omission." He prayed the application be granted. In reply submission, Mr. Rumenyela contended that the judgment and the decree do not have any clerical error or omission. He insisted that the given order is self-explanatory and there is no what is called clerical error or omission to be rectified in line with section 95 and 96 of the Civil Procedure Code, Cap. 33 R.E. 2019. Mr. Rumenyela pointed out that in Victor's case (supra), the Court of Appeal quoted with approval the definition in Black's Law Dictionary that: "...4 clerical error means an error resulting from a minor mistake or inadvertence especially in writing or copying something on record, and not from judicial reasoning or determination." He also pointed out that in the very judgment of the Court of Appeal it was stated thus: "This implies that for an error to be clerical it must be minor and should not go to the root of the court's decision or affect the substance of the Judgment; decree or court order." He added that the error and omission the applicant wants this Court to rectify goes into the root of the Court's decision and affects the substance of the judgment and decree. He said, adding the words "per month", the judgment and decree would change the whole judgment. Mr. Rumenyela held a stance that the rectification sought would necessitate additional of other words in that the judgment will have to state the amount of 150,000/= be paid per month starting from a particular date to a certain date, something which will change the whole verdict of the case. Mr. Rumenyela is of another stand view that if the applicant was not satisfied with the said judgment and decree, she was supposed to appeal or file revision. He stressed the judge intended to mean what he stated in both the judgment and decree. He prayed the application be dismissed with costs. It should be borne in mind that in the counter affidavit, it was averred that the prayer is basically a substantive issue, incapable of being dealt with in an application for rectification of the judgment. 5 I have closely considered the submissions of both parties. I have come to a conclusion that the counsel for the applicant did not consider the prayer in the drawn order that was issued by the trial court in Civil Application No. 5 of 2021. He also did not consider the prayers sought that were listed in the decree of this Court in Civil Appeal No. 1 of 2022. In the drawn order it was indicated that the applicant was praying for: "The maintenance of her biological issue namely; J. A. W (name

withheld by this Court) born on 19/06/2019. // Again, in the decree of this Court, the prayers that were sought were as I emulate:

1. That, the appeal be allowed thereby quashing and setting aside the decision by the trial Juvenile Court in Civil Application No. 05/2021.
2. In alternative/ the matter be remitted to the trial court for a new trial and or abiding to the relevant law and procedure.
3. That, the costs of this appeal be provided for.
4. Any other relief(s) as this Court may deem fit to grant. In the premises, this application attracts delving into the substance of the judgment and decree of this Court in Juvenile Civil Appeal No. 1 of 2022 thus outside the ambit of the provisions of section 95 and 96 of the Civil Procedure Code, Cap. 33 R.E. 2022 as maintained by the counsel for the respondent. Having said the above, I accept the stand view held by Mr. Rumenyela that the determination of this application may attract to determine when the maintenance shall be reckoned and when to end because I entertain a view that such order cannot be for an indefinite duration. I outright reject the submissions advanced by the counsel for the applicant that the sought rectification is on a mistaken omission to include, "payable monthly," words in the judgment and decree of this Court. Consequently, rule that this application is not only unmerited but also misconceived. I dismiss it. Because the application concerns the welfare of a child where maintenance is sought, I refrain from making an order for costs. It is so ordered. DATED at KIGOMA this 13th day of August, 2024.

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CASE PAGE	https://chat.esheria.ai/case-law/tanzania/kuruthum-moshira-shid-v-amos-wambura-serikali-ChildMaintenance-tanzlii-2023--6a3ea52c3b1caa9129825917

Prepared on 13 October 2026 · Esheria