

TANZANIA / JUDGMENT

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IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA TEMEKE HIGH COURT SUB -
REGISTRY (ONE STOP JUDICIAL CENTRE) AT TEMEKE CIVIL APPEAL NO. 29296 OF 2024 (Arising
from the decision of the Juvenile Court of Dar es Salaam at Temeke in Application No 21905
of 2024). N.A.K..... APPELLANT VERSUS
M.M.M..... RESPONDENT

JUDGMENT

18/02/2025 & 28/02/2025 M.MNYUKWA, J. This is the first appeal which I am enjoined to reconsider and re- evaluate the entire evidence on record by reading it all together and subjecting it to critical scrutiny and if warranted to draw my own conclusion incase the circumstances demand. I am subscribing this settled position of law with a decision of the Court of Appeal in Leopard Mtembei v Principal Assistant Registrar of Titles, Ministry of Lands, Housing and Urban Development and Another, Civil Appeal No 57 of 2017. As the law requires, the appellant in this case (the then applicant) moved the juvenile court of Dar es Salaam at Temeke (the trial court) seeking the following modes of execution to enforce the maintenance order issued against the respondent. She opted two modes of execution as presented below;

1. Attachment, valuate and sale of the respondent house No. 27 located at Mbagala area, Temeke District in Dar es Sa/aam, thereafter sale of said house Tsh 547,200/- as arrears and health insurance, Tsh 50,000 as education costs arrears and health insurance arrears be deducted from the sale proceeds and the said amount be given to the applicant through this court, (sic)
2. The respondent be arrested and committed to prison as a civil prisoner if he continues to disobey the court order made on the 14h September 2023. As per the record, the appellant filed an application for execution at the trial court on September 2024. In her affidavit she deponed that respondent denied to provide maintenance as ordered by the trial court despite of the formal and informal reminder from her. She further deponed that respondent is a man of means as he is a businessman and therefore capable to maintain his children, she thus prayed the application to be granted. Upon being served with the application, the respondent vehemently disputed the appellants affidavit through a counter affidavit where under paragraph 4 and 6 of his affidavit he deponed that he used to maintain his children and therefore complied with the court order. Respondent went further by attached

documents purported to prove the compliance of the trial court order where those documents signified receipt of the money for maintenance by the social welfare officer of the juvenile court from the respondent for the same to be handed over to appellant. Respondent further denied appellant's averment that he is a man of means and that he had sufficient income. It is in record that after parties' filed their respective affidavits, the matter was scheduled for hearing. During the hearing both parties appeared in person, unrepresented. It was appellant's submission in the trial court that an order for arrest and detention of the respondent as a civil prisoner will not serve any useful purpose. She admitted that respondent complied with the court order but she had a reservation that his compliance was not fully. She complained that, some items listed in the trial court order like food stuffs were not offered by the respondent as ordered. She went on that, she received an affront from the respondent's wife which forced her to refuse to accept the money from respondent. Appellant went on to submit that if the respondent could have been complied with the court order, the attachment and sale of the

- M respondent's house would not be sought since her wishes is for respondent to comply with the court order. Contesting, it was respondent's submission that, he complied with the court order and that sometimes appellant refused to receive food stuffs for she claimed that those food stuffs might be poisoned. He said that, he used to pay all the necessities of life for his children and that sometimes appellant refused to receive money from him. He said that, considering the fact that he complied with the trial court's order, the orders sought by the appellant were immaterial and unenforceable. He thus prayed the application to be dismissed. After hearing both parties, the trial court did not determine the second mode of execution as the same were abandoned by the appellant during the hearing. Thus, the trial magistrate determined only the first mode of execution trial is attachment and sale of the respondent's house however upon analysed the evidence on record and the parties' submissions, the trial court dismissed the application for being devoid of merit. Dissatisfied with the decision of the trial court, the appellant knocked the doors of this court with only one ground of appeal as reproduced hereunder;

1. Kwamba Mahakama Hakimu Mkazi wa W Haya ya Watoto ta Dar es Salaam amekosea kisheria na kimantiki kwa kutoa maamuzi ya kuKauaa ombi la Mieta Rufaa kuhusu uteke/ ezaji na kuyatupia mbali. Literally the appellant's ground of appeal in English language is that;
1. That, the trial magistrate of Dar es salaam Juvenile court erred in law and fact to dismiss the appellant's application for execution. During the hearing of appeal, parties were unrepresented and the hearing of the appeal was conducted by way of oral submission. In her brief submissions, the appellant submitted that an order to detain respondent as a Civil prisoner does not serve any useful purpose since her wishes is for respondent to comply with the trial court order. Additionally, she complained about the amount of maintenance awarded by the trial court as she alleged that it is insufficient to cover children's maintenance compared to the living costs. She further stated that, she filed an application

for execution with the aim to compel the respondent to comply with the court order. Responding, the respondent was very brief. He submitted that the appellant failed to show reason as to why she was not satisfied with the decision of the trial court which dismissed her application. He said that the decision of the trial court was fair and just as he complied with the court order. Rejoining, the respondent insisted that she refuse to acceptance monies paid as maintenance since the same is insufficient to cater for children's needs. From the parties' submissions, the only issue for consideration and determination is whether the appeal has merit. In determining this appeal, my task is to determine whether it was correct for the trial court to dismiss the appellant's application. It is settled that the option of choosing the mode of execution to enforce the decree of the court is upon the decree holder. However, that power is not absolute as it is subject to certain conditions set out by the law that is the Civil Procedure Code, Cap 33 R.E 2019. Indeed, the modes of execution chose by the appellant, are among the modes of execution which are stated in our Ovi! Procedure Code, Cap 33 R.E 2019. Reverting now to our case at hand, it is important in a very beginning to appreciate the findings of the trial court for not determining the second mode of execution of arrest and detention the respondent as a civil prisoner as the same were abandoned by appellant in her submission at the trial court. It is clear that appellant appreciate the fact that to arrest and detain the respondent as a civil prisoner will not serve usefu' purpose for the best interest of her children as their right to maintenance wH' not be realized. Therefore, the trial court was right to abandon this prayer too. And therefore, the appellant's complaint if any, on this mode is misconceived. Coming now to the second mode of execution, it was appellant submissions tnac hei intention is not to attach and sale respondent's house, but to asK cue intervention of this court to ensure that respondent compiy with court's order. This complaint was strongly disputed by the respondent who vehemently argued that the decision of the trial court was fair and just since he is complying with the court order. On my part, after scrutinized the trial court's record, I managed to find attachment accompanied respondent's counter affidavit to encounter appellant's averment that he did not comply with the court order. As deponed under oaraaraph 4 and 6 of his counter affidavit, it is my view that respondent proved before the trial court that he complied with the court order for maintenance. This is because respondent counter affidavit was not encountered by the appellant for she did not file a reply to counter affidavit. Further to that, apart from the fact that appellant failed to prove respondent's non-compliance to the trial court order, still in her submission to this court and to the trial court she clearly stated that respondent complied with the court order but he is not in full compliance and that her intention is not to attach and sale respondent's house. Considering the above submission, it is without doubt that respondent complied with the court order as deponed in his counter affidavit which remain unchallenged. I hold so based on the evidence on record which proved that the money for maintenance of children were received by the social welfare officer of the Juvenile court for the same to be handed ove' to appellant. Therefore, based on that evidence, I don't see any reason to fault the trial court's findings to dismiss the appeal for lack of merit. In respect co me food stuffs alleged to have not been supplied by the respondent, I aun t, think if this issue need to detain me much since the records revels that

appellant refused to receive the same for alleging that they might be poisoned. Therefore, his complaint is baseless. Before I pen off, I wish to comment on the new issue raised by the appellant in her submission about the amount of maintenance for what she claimed that the same is not enough to cover children's maintenance. In this aspect, it is my view that since the same was not a ground of appeal, it cannot be entertained since the appeal centred on the dismissal of the application for execution. That being said and considered, I find the appeal is devoid of merit and it is hereby dismissed with no order as to costs. M.M KWA JUDGE h 28/02/2025 Court: Judgment delivered in the presence of parties. M.MNY JUDGE 28/02/2025

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Prepared on 14 October 2026 · Esheria