

TANZANIA / JUDGMENT

JUgd Civ Appeal No

COURT
TANZLIIDECIDED
1 January 2024

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB-REGISTRY OF
MANYARA AT BABATI CIVIL APPEAL CASE NO. 25455 OF 2024 (Originating from Execution Case
No. 10812 of 2024 Decision of Hanang Juvenile Court) SELINA GABRIEL
.....APPLICANT VERSUS PATRICE GIDION
BURA..... RESPONDENT

JUDGMENT

28th November & 17th December, 2024 Kahyoza, J. Selina Gabriel Gacha (Selina) applied for maintenance costs of six issues out her relationship with Patrice Gidion Bura (Patrice). The trial court heard the parties and ordered (Patrice) to pay Tzs. 100,000/= as maintenance costs vide Juvenile Court Application No. 9/2020. In 2023 Selina filed another application, which was baptized as Juvenile Application No. 3/2023 praying for payment of Tzs. 2,220,000.00 being unpaid lump sum effective from April, 2021 to January, 2023 or in alternative to be permitted to cultivate 5 acres of land to cater for maintenance costs awarded in Juvnile Court Application No. 9/2020. 1 The executing resident magistrate in charge after hearing the parties, granted Selina 3.5 acres of farm to cultivate and grow her food. He added that his order did not vary maintenance costs awarded in Juvenile Court Case NO. 9/2020. Selina applied for execution of the order or decree in Juvenile Court Application No. 3/2023 seeking to be paid Tzs 2,220,000.00 and to be given 3.5 acres of land for cultivating. The resident magistrate in charge while attending the application for execution varied the amount ordered as maintenance from Tzs 100,000.00 per month to 60,000/= per month on the ground that having been awarded 3.5 acres to cultivate, it was no justice for Selina to claim Tzs 100,000.00 as maintenance for month. Selina was not satisfied. She knocked the doors of this Court. On the day fixed for hearing both parties appeared in person. The appellant complained that the district court altered the maintenance costs without the respondent appealing. The respondent submitted that he was ready to pay what the district court ordered and he insisted that the order to give the appellant 3.5 acres of land was not part of the order. The appellant replied that she was granted a house and farm. She added that Tzs. 60,000.00 was not enough to maintain three children. 2 Having heard the parties there is issue one whether the executing resident magistrate in charge has power alter the decree. It is evident that the maintenance order made in Juvenile Application No. 9/2020. Applications No. 3/2023 and No. 10812/2024 were for execution and not varying the maintenance order. The prayers or reliefs in the said applications are evident of the applicant's intent. In Application No. 3/2023 Selina, the

applicant, prayed- "[the] honourable court to grant an enforcement order drawn in civil Application No. 09/2020 against Patrice Gidion Bura in respect of monthly maintenance....." And in Application No. 10812/2024 Selina prayed "the judgment debtor to be ordered to voluntarily pay the money decree...". Unfortunately and without mandate, the resident magistrate in-charge while attending the applications altered the decree or order sought to be executed. To demonstrate that, the resident magistrate in-charge while attending Application No. 3/2023 ordered the applicant to be given 3.5 acres of land to cultivate and added that the respondent is not barred to continue providing monthly contribution as per the order of in Juvenile 3 Application/Case No. 9 of 2020. Thus, he altered completely what the trial magistrate had previously ordered. Further, the resident magistrate in-charge misdirected himself while attending Application No. 10812/2024 instead of issuing the order of attachment, he altered the decree. He had previously ordered Selina to be given a 3.5 acres of land and maintenance costs of Tzs. 100,000.00. as ordered in Application No. 9/2020, he altered that and ordered Selina, the applicant to be paid Tzs. 60,000.00. The executing resident magistrate in-charge's mandate was to execute the decree or the order of the court. He had neither revisional power nor mandate to review or alter the award. Decree is said to be a conclusive determination of the parties right. A decree can be varied on appeal, revision or on review subject to the law. I am alive of the fact that Juvenile Court has mandate to review the maintenance order when properly moved. What the resident magistrate in-charge did in this court of altering the decree or order vide an application for execution was ultra vires his mandate entrusted to him, which was to execute the decree. The Court of Appeal in *Balozi Abubakar Ibrahim & Another vs Ms. Benandys Ltd & Others* (Civil Revision No. 6 of 2015) [2015] TZCA 5 (18 November 2015) explained the 4 meaning of execution by referring to the decision of Lord Denning, M.R. in *Re Overseas Aviation Engineering (GB) LTD* [1962] 3 All E.R.12 at page 16, thus- "Execution means, quite simply, the process for enforcing or giving effect to the judgment t of the court: and it is completed when the judgment creditor gets the money or other thing awarded to him by the judgment." The resident magistrate in-charge's orders mandate in violation of his mandate, cannot be left to stand. I, therefore, I invoke the Court's revisional powers under section 79 of the Civil Procedure Code, [Cap 33 R.E 2019], to quash the proceedings and set orders in Applications No. 3/2023 and Application No 10812/2024. I restore the order in Juvenile Application or Case No. 9/2020, to the effect that Selina is awarded maintenance costs of Tzs. 100,000.00 monthly. Before I pen off, let me remind the resident magistrate in-charge that courts execute decrees or orders, thus, do not execute judgments or rulings. For that reason, before attending an application for execution, there should be attached to the application a valid decree or drawn order. Once that is 5 done, the resident magistrate in-charge cannot go wrong in executing the decree or order. Selina, the appellant, is at liberty to enforce the orders of the Juvenile Court in Application No. 9/2020 for payment maintenance costs of Tzs 100,000.00. I make no orders to costs as the parties are not to blame. It is so ordered. Dated at Babati this 17th day of December, 2024. John R. Kahyoza, JUDGE Court: Judgment delivered in the presence of the appellant and the respondent. Mr. Luckson, (RMA) John R. Kahyoza, JUDGE 17/12/2024 6

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://media.tanzlii.org/media/judgment/324078/source_file/23647e3488e94e4a/JUgd_Civ_Appeal_No._25455_2024_SELINA.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/selina-gabriel-gacha-v-patrice-gidion-bura-maintenance-tanzlii-2024--6a3ea52d3b1caa9129826de0>

Prepared on 14 October 2026 · Esheria