

TANZANIA / JUDGMENT

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA TEMEKE SUB-REGISTRY (ONE-STOP JUDICIAL CENTRE) AT TEMEKE CIVIL APPEAL NO. 29415 OF 2024 (Arising from the ruling of the Juvenile Court of Dar es Salaam, at Temeke, in Juvenile Civil Application No. 000023619 of 2024) WARDA ALLY MOHAMED..... APPELANT VERSUS ALLY IDD MSOYA..... RESPONDENT

JUDGMENT

27th February 2025 & 06th March 2025 BARTHY, J.: The appellant, Warda Ally Mohamed, initially instituted an application before the Juvenile Court of Dar es Salaam at Kisutu against the respondent, seeking maintenance for their three children. Through mutual agreement, both parties reached a consensus on the following terms: the appellant would have custody of the three children, while the respondent would be granted access and required to provide maintenance amounting to TZS 300,000/- per month, to be deposited into the appellant's bank account. Additionally, the parties agreed that all school-related expenses would be covered by the respondent, health insurance would be provided by the appellant, and both parents would equally share the costs of the children's clothing. However, alleging a breach of the order, the appellant sought to enforce it, thus the application was made before the Juvenile Court of Dar es Salaam at Temeke (the trial court), vide Juvenile Civil Application No. 000023619 of 2024. The applicant had sought to enforce the maintenance order by detaining the respondent as the civil prisoner. The trial court, upon hearing the matter, dismissed the application. Aggrieved by the said decision, the appellant has now preferred the present appeal, challenging the ruling of the trial court on a single ground;

1. That, the honourable Resident Magistrate of the Juvenile Court of Dar es Salaam, at Temeke, erred in law and fact by denying the appellant prayer on enforcement. Wherefore, the appellant prays that this appeal be allowed, the ruling of the trial court issued in Juvenile Civil Application No. 000023619 of 2024 on 06/11/2024 be quashed and set aside, and any other reliefs deemed fit and just be granted by this court. The matter was set for hearing, with the appellant appearing in person, while the respondent was represented by learned advocate Eliah Pius, who appeared on behalf of Mr. Said Nassoro, having been duly

instructed to proceed. By mutual consent, the parties agreed to dispose of the appeal through oral submissions. Arguing the appeal in person, the respondent stated that she had filed an application for maintenance, and the trial court, in its decision, ordered the respondent to pay school fees, cover all school-related expenses, and provide TZS 100,000/- for food. The court also ordered the respondent to deposit the amount into her Postal Bank account. However, the respondent had only paid the school fees and provided money for food at his discretion. He also stopped paying the school fees and making maintenance payments whenever he wished. As a result, prompting the appellant to file the application to enforce the trial court's decision. Nevertheless, to her surprise, the court merely reminded the respondent of his obligation. Despite this, the respondent repeatedly told her that he would no longer pay the school fees or cover other expenses. Resisting the appeal, Mr. Pius argued that the appellant sought to enforce the order of the court by having the respondent detained as a civil prisoner for allegedly failing to comply with the court's order requiring maintenance payments through her bank account. However, during the month in question, the respondent had transferred the required amount via mobile money to one of their children, who was the direct beneficiary. This action led the appellant to initiate enforcement proceedings seeking his imprisonment. The respondent's counsel further contended that the trial court's decision was correct, as records showed the respondent had been making maintenance payments consistently for 34 months since the court's order was issued in 2022, with the exception of a single month. The deviation in payment method did not constitute deliberate non-compliance. Furthermore, the counsel argued that imprisoning the respondent would negatively impact the welfare of the other children who rely on his support. Citing *Alice Mbekenga vs. Respicious P. Mtumbala*, Civil Appeal No. 68 of 2020 (High Court) and *Rose Jacob v. Jacob*, he maintained that the appellant's approach to enforcement was excessively harsh and counterproductive. He also referenced *Mackson Kabula vs. Teddy Sado*, Matrimonial Appeal No. 1 of 2021 (High Court at Kigoma), where the court emphasized that maintenance orders should not be misused to financially burden the other parent. Based on these arguments, he urged the court to dismiss the appeal. In rejoinder, the appellant argued that the request to imprison the respondent was justified, as he had not paid child maintenance since 2022, having only covered school fees, which he has now also stopped paying. This court having heard the arguments of both sides it is tasked with the duty to determine as to whether the appeal has the merit. This being the first appellate court, the court has the duty to re-evaluate the evidence tendered before the court and make its own findings as so held in *Crescent Impex (T) Limited vs Mtibwa Sugar Estates Limited* (Civil Appeal No. 455 of 2020) [2023] TZCA 17501 (16 August 2023). The appellant has faulted the trial court for not executing its maintenance order. It was the appellant's submission that the appellant has defaulted to pay the maintenance as ordered by court since 2022 and he has stopped paying school fee and providing for maintenance of three children. Stating the respondent was said to have been paying for maintenance as he desired not according to the order of the court. The counsel for the respondent refuted the argument stating the respondent has been paying for maintenance for the entire period since the order of the court was issued. However, in one month only he had sent the money through the

mobile number and not through the bank account as required. He insisted the mode of enforcement preferred by the appellant was harsh and did not intend to safeguard the best interest of the children by imprisoning the respondent. Having reviewed the evidence on record and the submissions of both parties, it is undisputed that the respondent was ordered by the trial court to provide maintenance for their three children in the amount of TZS 300,000 per month and to cover the school fees of three children. It is beyond question that failure to pay maintenance affects the welfare of the children, which remains the paramount consideration of this court. A party is entitled to enforce a court decree or order to ensure the provision of maintenance for the welfare of the children. In enforcing civil judgments, various modes are available, including the attachment and sale of property or, in extreme circumstances, the enforcement by detention as the civil prisoner. However, courts must exercise great caution in enforcing maintenance orders to avoid becoming entangled in family disputes and to ensure that enforcement measures serve the best interests of the children. In the present matter, the records of the trial court indicate that the respondent admitted to not depositing the maintenance amount into the appellant's bank account for one particular month, which led the appellant to file an application for enforcement. Instead, the respondent transferred the amount via mobile payment to one of their children. The appellant, in turn, claimed that the respondent had failed to comply with the court's order and had completely neglected his duty to provide maintenance. However, the appellant had failed to produce evidence from her bank records to demonstrate that no maintenance payments were made since 2022 as claimed. Additionally, no proof was submitted to show that she personally covered the school fees for the children. It is a well-established legal principle that in civil proceedings, the burden of proof rests on the party making allegations. This principle is enshrined in sections 110 and 111 of the Evidence Act, Cap 6 R.E. 2019. The Court of Appeal, in *Jasson Samson Rweikiza vs Novatus Rwechungura Nkwama*, Civil Appeal No. 305 of 2020 [2021] TZCA 699 (29 November 2021), reaffirmed that the party alleging a fact must substantiate it with credible evidence. In the case at hand, the appellant failed to prove that the respondent entirely neglected his duty to provide maintenance. Her submission before this court contradicts the claims made in her application before the trial court, where she sought enforcement for the defaulted school fees amounting to TZS 2,720,000 and school transportation fees of TZS 700,000. This contradicts her assertion that no maintenance had been paid since 2022. Furthermore, the appellant conceded that the respondent did transfer money via mobile payment, albeit not through the bank account as ordered by the trial court. Even if this court were to find that the respondent had completely failed in his duty to provide for his children, the enforcement of a maintenance order through detention as the civil prisoner must be a last resort after all other measures have been exhausted. The appellant did not first seek alternative enforcement mechanisms, such as garnishment of accounts or attachment of assets, before opting for imprisonment. The principle that civil imprisonment should be the last resort in enforcement of the decree or order of the court, as held in *Eurafrican Bank (T) LTD vs AMI Travel Bureau LTD & another* (Commercial Case No. 8 of 2006) [2006] TZHC 189 (20 October 2006) where the court held that a decree-holder must demonstrate that the debtor has the means to comply with the court order but willfully refuses to do so. Similarly, in *Simon Mwita Mlagani & 2SSnother vs Kiribo Limited* (Execution 56 of 2020)

[2022] TZHC 602 (15 March 2022), the court held: <3 "In law, there are various legal means provided for one to enforce the court's award. Nevertheless, resorting to the arrest and detention mode is not the party's choice but, as a matter of legal practice, it is a legal means of last resort." Since the appellant failed to demonstrate that other enforcement options had been exhausted or that the respondent willfully defaulted despite having the means to comply, her application before the trial court was unmeritorious. Accordingly, I find no justifiable reason to overturn the decision of the trial court. The appeal is hereby dismissed for lack of merit. Given the nature of the relationship between the parties, I make no order as to costs It is so ordered. Dated at Dar es salaam this 6th day of March, 2025. G. N. BAR JUDGE

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