

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

CIVIL APPEAL NO. 9 OF 2020

(Arising from the Judgement of the Juvenile Court of Musoma at Musoma
in Civil Application No. 13 of 2018)

VERONICA AGOSTINO SHIRATI APPELLANT

VERSUS

ISSA RAMADHAN KISIBO RESPONDENT

JUDGEMENT

Date of Last Order 01.06.2020

Date of Ruling: 05.06.2020

Kisanya, J.:

The appellant, **Veronica Agostino Shirati** and the respondent, **Issa Ramadhan Kisibo** are biological parents of SRK (name withheld). The appellant filed an application in the Juvenile Court of Musoma at Musoma (hereinafter referred to as “the juvenile court”) praying, *inter alia*, for a maintenance order of the said SRK at the tune of Tshs 300,000 per month. She also prayed for 10% of the respondent’s pension upon his retirement.

After full trial, the juvenile court ordered the respondent to pay Tshs. 60,000 each month as maintenance of the said SRK and that, from March 2021, he should pay Tshs. 80,000 per month after paying the pending bank’s loan. The order for payment of 10% of respondent’s pension was not granted on the ground that the respondent is still in service.

Feeling that the justice was not done, the appellant appealed to this Court on the following grounds, in verbatim:

- 1. That, the trial court erred in law and fact for awarding the amount of Tshs. 60,000 (Sixty Thousand Shillings Only) per month as child maintenance which is too low compared to the basic needs of a child.*
- 2. That, the trial court erred in law and fact for entertaining the matter between the parties without giving an opportunity to Social Welfare Officer to bring the report something which is contrary to the law.*
- 3. That, the trial court erred in law and fact for failure to order payment of 10% pension of the respondent who is at the time to retire.*

At the hearing of this appeal, the appellant appeared in person while the respondent enjoyed the services of Ms. Flora Okombo, learned advocate.

The appellant reiterated the grounds stated in the petition of appeal. She stated further that, the maintenance order granted by the juvenile court was too low and below Tshs. 100,000 which the respondent was paying before the social welfare officer.

In reply, counsel Flora conceded to the second ground that the social welfare officer was not involved. She argued that the omission contravened rule 85 of the Law of Child (Juvenile Court Procedure) Rules, 2016. The learned counsel was of the firm view that the proceedings before the trial court was vitiated. She therefore urged me to nullify and quash the proceedings of the trial juvenile court and order retrial.

After due consideration to the evidence on record, the petition of appeal and the submission by the parties, I find that this appeal can be disposed of by addressing the second ground on failure by juvenile court to require the social welfare officer to prepare a social enquiry report before issuing the maintenance order.

Factors to be considered by the juvenile court in granting a maintenance order are specified in section 44 of the Law of the Child Act, Cap. 13, R.E. 2019 (the LCA) and rule 84 of Law of Child (Juvenile Court Procedure), 2016 (the Rules). This include, the wealth and income of both parents and the impairment earning capacity of the person liable to maintain the child. Section 44 of the LCA provides that:

- 44. The court shall consider the following matters when making a maintenance order*
- (a) the income and wealth of both parents of the child or of the person legally liable to maintain the child;*
 - (b) any impairment of the earning capacity of the person with a duty to maintain the child;*
 - (c) the financial responsibility of the person with respect to the maintenance of other children;*
 - (d) the cost of living in the area where the child is resident; and*
 - (e) the rights of the child under this Act.*

All of the above factors are required to be considered. It is not sufficient to consider one factor in isolation of the other. Therefore, the juvenile court is empowered to engage the social welfare officer to prepare a social enquiry report before consideration of an application to make an order for maintenance. This is provided for under section 45 of the LCA as follows:

- “45.-(1) The court may order a social welfare officer to prepare a social enquiry report before consideration of an application to make an order for maintenance, custody or access.*
- (2) The court shall, in making such order, consider the social enquiry report prepared by the social welfare officer.*

The above provision suggests that it is not mandatory for the court to engage a social welfare officer. His or her engagement depends on the circumstances of each

case. It is my considered opinion, in deciding whether to require the social welfare officer to make an enquiry, the juvenile court has to satisfy itself on whether the factors required to be taken into account in making the maintenance order have been established. This is also based on the provision rule 85(1) of the Rules which provides:

“85.-(1) The court may, before granting an order for maintenance in accordance with section 45 of the Act, request a social welfare officer to prepare a social enquiry report for the purposes of-

(a) assessing the ability of parents to provide for the maintenance and care of the child; and

(b) ascertaining the accuracy of any statements relating to income and outgoings and liabilities.”


In the present case, the social welfare officer was not engaged by the juvenile court. Guided by the above position of law, I am not in agreement with counsel Flora that the whole proceedings before the juvenile court were vitiated due to the failure to require the social welfare officer to prepare the social inquiry report. This is because engagement of the social welfare officer depends on the circumstances of each case. Further, pursuant to rule 85(1) of the Rules, the juvenile court engages the social welfare officer before granting the maintenance order. Therefore, even if the juvenile had to require the social welfare officer to prepare the social enquiry report, the proceedings conducted before granting the maintenance order cannot be vitiated.

However, it should be noted that social welfare officer's duty is to assess the ability of parents in maintaining and taking care of the child; and ascertain the accuracy of any statements relating to income and outgoings and liabilities. In the case at hand, these issues were not proved accordingly. The juvenile court considered the salary income of the appellant only. Thus, it was not established as to whether the

respondent has no other source of income. Also, the ability or income of the appellant was not stated and considered. In such a case, there was a need of engaging the social welfare officer prepare the social enquiry report before the juvenile court grant the maintenance order of Tshs. 60,000 per month. It is therefore not clear as to whether the said amount was realistic or not. This is when it is considered that when the matter was reported to the welfare officer, the respondent used to pay Tshs.100,000 per month.


In view of the above, I am inclined to invoke the revisional power of this Court to quash and set aside the judgement and decree. For the interest of justice, the case file is remitted to the trial magistrate to request the social welfare officer to prepare a social enquiry report under section 45 of the LCA and rule 85 of the Rules. Thereafter, judgement (including the maintenance order) should be made after considering the report prepared by the social welfare officer and the evidence on record. During the pendency of this matter, the respondent should continue to pay Tshs. 60,000 per month as maintenance of SRK as ordered by the juvenile court. Order accordingly.

Dated at MUSOMA this 5th day of June, 2020.


E. S. Kisanya
JUDGE
5/6/2020

Court: Ruling is delivered in open court this 5th day of June, 2020 in the presence of the appellant and the respondent.




E. S. Kisanya
JUDGE
5/6/2020