

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
AT SUMBAWANGA**

CIVIL APPEAL NO. 5 OF 2020

(Originating from Mpanda Juvenile Court in Civil Case No. 1 of 2019)

BETWEEN

MUSA SIMON KAPUFI APPELLANT

AND

MWANAIIDI MUSA ATHUMAN RESPONDENT

Date of Last Order: 18/05/2021

Date of Judgment: 11/08/2021

JUDGMENT

C.P. MKEHA, J.

Before the Juvenile Court of Mpanda at Mpanda, the respondent herein petitioned against the appellant with regard to parentage of one Seleman Musa Kapufi, a thirteen years child. Having heard the petition on merits, the trial Court decreed the appellant to be father to Seleman Musa Kapufi with an order for the respondent to pay the petitioner a sum total of Tshs. 25,480,000/= being maintenance costs of the issue from 2005 to 2019. The appellant was also ordered to provide education costs for the said Seleman Musa Kapufi until completion of his education. Lastly, the appellant was further ordered to pay costs of the preferred petition.

Aggrieved with the Judgment of the trial Court, the appellant preferred the present appeal with the following three (3) grounds namely:

1. The trial Court grossly erred both in law and in fact in entertaining and determining the petition while it was time barred.
2. The trial Court grossly erred both in law and in fact in relying on the DNA test to hold that the appellant is father to Seleman Musa Kapufi.
3. The trial Court grossly erred both in law and in fact in ordering the appellant to pay Tshs. 25,480,000/= to the respondent as compensation.

Hearing of the appeal was conducted orally whereas to argue for the same, the appellant engaged services of Mr. Kifunda, learned advocate while the respondent enjoyed services of Miss. Sekela, learned advocate.

Arguing for the 1st ground, Mr. Kifunda learned counsel argued that; the petition was filed in 2019, that is, after lapse of 14 years as the said Seleman Musa Kapufi was born in 2005. It is from the above Mr. Kifunda advocate argued the petition to had been filed out of the prescribed time.

The appellant's counsel submitted in respect of the 3rd ground that; in the absence of proof of specific damages, the trial court erred in awarding the sum of Tshs. 25,480,000/= adding that, even terming the same as general damages, the same was unjustifiable for the trial court did not indicate on how the awarded damages were arrived at. Notably, Mr. Kifunda had nothing regarding the 2nd ground of appeal. Henceforth, the appellant's learned counsel Mr. Kifunda urged that, the preferred appeal to be allowed.

In response, Ms. Sekela learned advocate for the respondent submitted in respect of the 1st ground that; the petition was filed within the prescribed time limit in terms of regulations 55 and 56 of 2016 and section 34(2)(c) of the Law of the Child Act (supra). Miss. Sekela submitted for the 3rd ground that, the awarded sum was reasonable and that the same falls within the appellant's duty in upbringing the child. She thus urged that , the appeal to be dismissed.

In rejoinder, Mr. Kifunda maintained his earlier stance that the petition is time barred for the Law of the Child Act came into force in 2009.

Having considered the trial court record and the submissions by the respective learned counsel for the parties, the following are evident: Starting with the 1st ground of appeal, the only argument by the appellant's counsel with regard to time limitation is that the Law of the Child Act came into operation in 2009 thus not covering the present matter as the child at issue was born in 2005.

As submitted by the respondent's counsel, section 34(2)(c) of the Law of the Child reads:

“(2) The application to the court may be made-

(a) - (b) – N/A.

(c) before a child is eighteen years of age or with special leave of the Court, after the child has attained eighteen years”.

It is undisputed that, in Tanzania; before enactment of the Law of the Child Act, there was no specific law that dealt exhaustively with regard to children rights with only segmented laws covering the Children and Young Persons Act, the Affiliation Act, the Adoption Act, the Day Care Centres Act and the Children Home Law (Regulation) Act which were repealed by the Law of the Child Act (supra) with some reservations.

Notably, the above listed laws catered for children's rights in some specific areas such as when a child is in conflict with the law specifically when he is accused of committing crimes as well as adoptions, affiliations and day care centres amongst. No single legislation that captured a cluster of rights as exhausted under the operational Law of the Child Act (supra).

Hurriedly, the appellant's counsel did not cite any provisions of any law barring applicability of the Law of the Child Act (supra) to the contrary. It thus follows that, with the coming into force of the Law of the Child Act (supra) and with the child at stake having not attained the age of eighteen, then, the Law of the Child Act (supra) stands to be the appropriate and applicable law as far as the parentage issue is concerned.

Though the Law of the Child (supra) has nothing as retrospective application, yet; the fact that the child named Seleman Musa Kapufi is still below 18 years is covered. Arguing to the contrary will be absurd for one would then expect the Law of the Child Act (supra) to apply only regarding children born after 2009 which is not the spirit in enactment of the law.

That is the gist in according protection to those above 18 years by way of an exception. If one takes the view of non-applicability of the Law of the Child Act (supra), then, one would argue the law also to have covered even those above 18 years but born after 2009 hence discriminatory, which from the principles governing legislation; would render the same a nullity.

From the above, this Court finds the raised issue as to non-applicability of the Law of the Child Act (supra) on time limitation non-meritorious in law. This being a matter dealt with under a special legislation, that is, the Law of the Child Act (supra); cannot be categorized and dealt with under the Law of Limitation Act, [Cap. 89] which is a general legislation. Henceforth, the 1st ground of appeal lacks merits.

Regarding the 3rd ground, as to the awarded sum of Tshs. 25,480,000/=, the respondent availed in Court her testimony to the effect that; the total costs incurred in raising up the child were Tshs. 5,000/= per day thus running to a total of Tshs. 1,800,000/= per annum. By the time the respondent testified in Court, that is, on 08/05/2020, the said Seleman Musa Kapufi was aged 14½ years, considering that the said child was born on 07/09/2005.

A thorough going through the trial Court record, nowhere it shows any involvement of a social welfare officer under section 99(1)(d) of the Law of the Child Act as it caters for a mandatory requirement as it reads:

“(1) The procedure for conducting proceedings by the Juvenile Court in all matters shall be in accordance with rules made by the Chief Justice for that purpose, but shall, in any case, be subject to the following conditions-

(a) - (c) ----- N/A

(d) a social welfare officer shall be present”.

It thus follows outrightly that, since the proceedings were conducted in absence of a Social Welfare Officer, the said proceedings were a nullity. Moreover, there were a number of reliefs which could have been awarded through the services of a Social Welfare Officer such as, the awarded maintenance amongst. The role of the social welfare officer ought to have been amongst, conducting an inquiry and hand over a report on the incomes of the parents and the alleged school fees among others. In other words, the awards would certainly be inexecutable if at all they are left to sail.

In the circumstances, having nullified the whole proceedings; the appeal is thus hereby allowed though from a different angle. The matter

should thus be tried before another Resident Magistrate with competent jurisdiction to hear and determine the same before a properly constituted Juvenile Court. In consideration to the fact that the issue at hand is on the welfare of respective child, this Court makes no order as to costs.

Dated at **SUMBAWANGA**, this 11th day of August, 2021.



C.P. MKEHA

JUDGE

11/08/2021



Date - 11/08/2021

Coram - Hon. W.M. Mutaki – DR.

For Appellant } Mr. Laurence John – Advocate hold brief for Mr.
Kifunda – Advocate
Appellant } Absent

For Respondent - Mr. Laurence John – Advocate hold brief for Ms.
Sekela – Advocate

Respondent - Absent

B/C - Zuhura

Court: Judgment delivered in the presence of Mr. Laurence John Advocate for the Respondent and holding brief for Mr. Kifunda Advocate for Appellant.



W.M. MUTAKI

DEPUTY REGISTRAR

11/08/2021

