

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MBALE

FAMILY AND CHILDRENS CAUSE NO. 28/1999

MRS. AYO PROSCOVIA:.....APPLICANT

VS

HENRY OJAMBO:.....RESPONDENT

BEFORE THE HON. JUSTICE D. N. MANIRAGUHA

RULING

This is an application for maintenance and contribution order the children statute and the Rules made there under.

Mr. Wegoye, learned counsel for the respondent, has raised a preliminary point in law objecting to the competency of this application.

The brief material facts are that the applicant alleges that the respondent is the father of one David Omollo who was born in June, 1977. From then up to the present time the applicant has had to spend on his school fees, medical charges, school uniforms, scholastic materials and other miscellaneous expenditures all amounting to about shs. 12,594,000/=. That the respondent contributed only once in March, 1998 when he bought Omollo clothes, beddings and paid school fees for two terms only.

It is now the contention of the applicant that the respondent is the father of David Omollo and is liable to contribute the sum total above mentioned, hence this application.

Mr. Wegoye's objection is that this application could only been brought under the children Statute. Titus an action could only be maintained if the child was below 18 years and not like here where David Omollo was born on 23/6/1977 and by the time this case came to court for hearing in May, 1999 he was nearing twenty two years of age.

Mr. Musiiho, learned counsel for the applicant on the other hand has argued that his client in paragraph 2 is seeking for a contribution of shs. 12,594,000/= for expenses incurred by the applicant as described. That she was relying on Rule 19 (2) (i) of the Family and children Court Rules, 1998 seeking a contribution order. That she is claiming a contribution for past expenses by her as the mother. He at this juncture agreed that “what I know is specifically prohibited is maintenance, and we are not going to pursue maintenance.” The applicant wants that the respondent makes good what the applicant lost.

Mr. Musiiho further argued that the cause of action was continuous and when the child reached 18 years the applicant could bring the action within six years of limitation.

The question to decide now is whether this application is competent or not.

This application was brought under the children Statute 1996, and Rule 19 (2) (i) of the Rules made thereunder.

“IN THE MATTER OF OMOLLO DAVIID (A CHILD)

AND

IN THE MATTER OF AN APPLICATION FOR MAINTENANCE AND
CONTRIBUTION ORDERS”.

It seeks that those two orders be made by this court. Even the affidavit of the applicant is sworn in support of the application for orders of maintenance and contribution.

Turning to the statute under which the Rules were made, the word maintenance under S. 77 (8) “shall include feeding, clothing, education and the general welfare of the child.”

Now, if Mr. Musiiho learned counsel for the applicant has abandoned the claim for maintenance before court, this means he has totally abandoned the claim to the amount of shs. 12,594,000/= which covers the amount allegedly incurred by way of expenditure on school fees, medical charges (which I would rank under general welfare), uniforms, scholastic materials (falling under general welfare. So the application becomes a non-starter leaving no cause of action to pursue.

Both the application for a Maintenance order and a contribution order are made under Rule 19(2) (h) and (i) respectively and these can only be made in respect of a “child” as defined by the Statute. This Statute became operational on 1st August, 1997 and section 3 thereof defines child as “ A child is a person below the age of eighteen years”

The under S. 97 (4) (b) of the statute it is provided that an application for a maintenance order may be made “before the child attains eighteen years of age.” Section 83 provides that “A maintenance order shall cease to have any force or validity on a child attaining the age of eighteen years.”

These three read together lead to one conclusion that no order of maintenance can be made after the child had attained 18 years, and where it was made then it ceases to have any effect at that age. So the applicant can not here bring an action which is barred by limitation under the Statute.

Regarding a Contribution Order as interpreted by Musiiho that it is to take care of what the applicant lost (during the period till the child reached 18 years) he has relied on Article 34(1) & (2) of the 1995 Republican Constitution and Ss. 16 and 35 of the Judicature Act. Those are general provisions which must be enforced in reliance upon particular Statutes – here the Children Statute. Court will not rely on the general statute to enforce what is importantly brought under a specific statute.

So I turn back to the “constitution order” issue, Mr. Musiiho argues that the cause of action for a contribution order is a continuous one and when a child reaches 18 years the applicant has six years of limitation. With due respect to learned counsel this proposition is untenable in light of the provisions of ss 77(4) (b) and 83 of the Statute.

What contribution order does the applicant herein seek? Looking at the application it is to contribute shs. 12,594,000 – allegedly spent on said David Omollo in bringing him up and educating him till this application was filed. It is to contribute to these expenses which I have above covered under maintenance and found that they are not claimable since on 13.4.99 when this application was filed David Omollo was over 21 years of age, then no order of contribution can legally flow from the expenses incurred when the child was below 18 years at this juncture.

This statute No. 6 of 1996 did consolidate the law relating to children and it repealed the whole of the Affiliation Act. under that Affiliation Act any order for the maintenance and education or for the contribution towards the relief of any child made in prance to that Act ceased to have any force or validity after the child in respect of who it would have been made attained the age of sixteen years, “except for the purpose of recovering money previously due under such order.”

There is clear that an applicant could bring an action for money still due under an order already made before the cessation age of sixteen years but still it did not mean that one could maintain an action for money used in the upbringing of a child after he reached the top age (16) years before any order had been made.

In the case before court there is not even any previous order for contribution made on which the applicant can rely after the bar age of eighteen years. This claim is thus unmaintainable in law, and does not disclose a cause of action.

Even under the repealed Affiliation Act under which this act should have been commenced the action had been barred by Statute upon the child obtaining the age of sixteen years on 23rd June, 1993.

This application is not even maintainable under the Children Statute which came into force on 1st August, 1997 when David Omollo was over twenty years old as it does not apply retrospectively.

In these circumstances this application is both Statute barred and discloses no maintainable cause of action, so the preliminary objection must succeed.

Mr. Wegoye, learned counsel for the respondent, he asked court to order that the costs be borne by the counsel for the applicant in the circumstances as the law is against him.

I have considered the above carefully and observe that had learned counsel for the applicant been a bit more careful in the preparation for this case he might have saved his client unnecessary costs. I will, however, leave this matter between the two.

In conclusion the preliminary objection succeeds, and the application is struck out with costs to the respondent.

D. N. MANIRAGUHA,

JUDGE

07.03.2000

10.05 a.m.