

**IN THE HIGH COURT OF ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**
(Family Jurisdiction)



2019/HPF/0423

IN THE MATTER OF:

**PART IV SECTION 15(1) OF THE AFFILIATION
AND MAINTENANCE OF CHILDREN'S ACT,
CHAPTER 64 OF THE LAWS OF ZAMBIA**

BETWEEN:

DORIS KAJANE MPHANDE

APPLICANT

AND

STANLEY KAOCHA

RESPONDENT

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 29th DAY OF
JANUARY, 2020**

For the Applicant : in person

For the Respondent : in person

J U D G M E N T

LEGISLATION REFERRED TO:

- 1. The Affiliation and Maintenance of Children's Act, Chapter 64 of the Laws of Zambia***

The applicant commenced this action on 21st November, 2019, by originating summons, claiming the following relief;

- 1. An order for the maintenance of the child, namely Jaden Mphatso Kaocha.*

The affidavit in support of the originating summons which is deposed to by the applicant, states that the applicant was involved in a relationship with the respondent, whose fruits were the birth of the child, Jaden Mphatso Kaocha, who was born on 5th October, 2018. This is evidenced by the under five card exhibited as 'DKM1' to the affidavit. It is stated that the respondent has not been supporting the child, and the applicant's salary is not sufficient to meet the needs of the child.

The applicant deposes that the respondent is in gainful employment with the Zambia Revenue Authority (ZRA), and she states that the child needs a maid, medical expenses, food, milk and diapers. That this is expensive, and the respondent should contribute towards the said expenses. She proposes that he contributes K5, 000.00 a month to the child's expenses.

The respondent filed an affidavit in opposition on 11th December, 2019. He deposes therein that he has failed to support the child, as the applicant has not brought the needs of the child to his attention. Thus, he assumed that the applicant is capable of looking after the child herself, as she works at the Independent Broadcasting Authority, as an Executive Personal Assistant to the Director General.

He further avers that there is no way that he could have known that the applicant's salary is not sufficient to meet the needs of the child, as she has managed alone for the past one (1) year. He agrees that he is in gainful employment, but that he has numerous responsibilities and has financial challenges such as rent, basic needs of the household, transport costs to and from work, tuition fees for himself and his dependents, which he is struggling to meet.

Produced as 'SK1' to the affidavit is the respondent's payslip, and he avers that his salary has remained unchanged since 2011, despite having improved his academic qualifications, and he is now a Legal Assistant. He avers that the K5, 000.00 a month proposed as maintenance for the child is unreasonable, frivolous and unattainable owing to the respondent's earnings, which are far below the amount proposed.

He further deposes that some of the amounts listed as the child's needs are not essential needs, and can be done away with, and the applicant can arrange to have her relatives look after the child. Further, the applicant can breast feed the child, unless there is any medical condition preventing her from doing so, and that if that is the position, she could have brought it to the respondent's attention, and he could have put the child on his medical scheme at work.

In the further affidavit in opposition filed on 16th January, 2020, the respondent avers that he has two other biological children that he is maintaining, namely Myrrh Takondwa Kaocha who is aged four (4) years and Wunikani Dashan David Kaocha aged two months old. Exhibited as 'SK1' is the birth certificate for Myrrh Takondwa Kaocha, and 'SK2' the birth record for Wunikani Dashan David Kaocha, to the said affidavit.

Therefore, the respondent has numerous responsibilities, and it is not practicable for him to maintain the child Jaden at K5, 000.00 a month. He proposes to maintain the child at K300.00 a month.

The applicant filed an affidavit in reply on 20th January, 2020. She deposes therein that the respondent should not have assumed that she would take up the responsibility for the child on her own. That when the

child was born, he incurred financial responsibility, and he should not be reminded of that responsibility.

It is averred that apart from his regular income from his employment as a Legal Assistant, the respondent has a shop in Chilenje and runs a business in Kamwala from which he earns income. The applicant deposes that she has no relatives to look after the child when she is at work, and that breast milk cannot sustain the child the whole day.

The amount of K300.00 proposed as maintenance for the child per month is stated as outrageous and unreasonable, bearing in mind the child's needs, and the economic situation that is prevailing. The applicant has no objection to the child being put on the respondent's medical scheme.

The child's needs are broken down as follows;

Maid	K1, 000.00
Formula milk	K580.00
Food	K1, 000.00
Medicals	K1, 000.00
Diapers	K420.00
Clothes	<u>K1, 000.00</u>
Total	K5, 000.00

I have considered the matter. It was brought pursuant to Section 15 (1) of the Affiliation and Maintenance of Children's Act, Chapter 64 of the Laws of Zambia. The said section provides as follows;

“15. (1) Where the court makes a maintenance order in respect of a child, the court shall also have power to make whatever order it thinks fit with respect to the custody of the child, and the right of access thereto of either parent, but the power conferred by this subsection and any order made in

exercise of that power shall have effect only during any period while the maintenance order is in force”.

This section relates to custody of a child where the court makes and order for the maintenance of the child. A perusal of the Affiliation and Maintenance of Children’s Act, Chapter 64 of the Laws of Zambia shows that it is Part III of the Act under sections 7 to 14 that deals with the maintenance of children. From the affidavit filed in support of the originating summons, it is clear that the applicant and respondent who have a child together are not married.

Therefore, the applicant being a single woman, Section 7 of the Act applies to her. It provides that;

“7. The court may, either at the time of making an affiliation order or upon subsequent application for a maintenance order, make a maintenance order in respect of the child concerned”.

This section entails that in order for a maintenance order to be made in respect of a child, an affiliation order must first be made. In this regard, Section 3 of the Act states that;

“3. The court may make an affiliation order on the application of a single woman-

(a) at any time within twelve months after giving birth to a non-marital child;

(b) at any time, upon proof that the putative father of the non-marital child has within the period of twelve

months next after the birth of the non-marital child paid money for its maintenance; or

(c) at any time within the period of twelve months next after the return to Zambia of the putative father of the non-marital child, upon proof that he ceased to reside in Zambia within the period of twelve months after the birth of the non-marital child”.

The applicant has not demonstrated that she has obtained an affiliation order with respect to the child, as provided in the above section. However, I note that the respondent in the two affidavits in opposition does not dispute that he is the putative father of the child herein. In my view, there would be no prejudice in making an order for affiliation of the child, the paternity not being in dispute. I accordingly make an order affiliating the respondent as the father of the child, Jaden Mphatso Kaocha.

As regards the maintenance for the child, it is the responsibility of both parents to provide and care for a child. The evidence on record shows that both the applicant and respondent are in gainful employment. They should therefore contribute towards the maintenance and welfare of the child. However, only the respondent has exhibited his payslip to show how much he earns in a month, and the applicant has not.

The said payslip which is exhibited as 'SK1' to the affidavit in opposition shows that as at 27th November, 2019, the respondent was earning K1, 912.91 as his net pay. There are two deductions for loan payments on his payslip, but the duration of those loans is not stated. The applicant in the affidavit in reply while alleging that the respondent has a shop in

Chilenje, and a business in Kamwala that earn him income outside his regular employment, has not told the court how much is earned from those businesses.

The needs of child are outlined in paragraph 12 of the affidavit in reply and they total K5, 000.00 every month. From those expenses, the kind of medicals required are not broken down to enable me decipher whether they are incurred monthly, but the respondent has deposed that he can have the child put on his medical scheme at work.

Further, clothes are not bought every month, although children grow rapidly, and there is frequent need to change their clothing. The applicant states that she has no relative to look after the child while she is at work, and having a maid to take care of the child whilst she is at work is a necessity.

However, as the applicant has not stated her income, that would enable me to assess how much each party should contribute towards the child's maintenance and care, I am at large to do so. The respondent has stated that he has two other biological children that he has to maintain, and other obligations like rent, transport to and from work, and school fees among others.

Taking all those factors into account, as well as the fact that the applicant should also contribute towards the child's maintenance, I direct that the respondent shall contribute K1, 000.00 every month towards the child's maintenance. This amount shall be payable on or before every 5th day of the month, commencing 5th February, 2020. The order is subject to variation upon sufficient grounds being shown, and shall cease when the child attains the age of eighteen (18) years. The

respondent shall endeavour to put the child on his medical scheme at work.

The applicant applied that the amount awarded as maintenance should be deducted by the respondent's employers and paid to her. Section 25 of the Affiliation and Maintenance of Children's Act provides that;

“25. (1) If, on the application of a person entitled to receive payments under a maintenance order, it appears to a court by which payment of any arrears under the order is enforceable-

(a) that, when the application was made, there were payments due under the order that were unpaid; and

(b) that the defendant is a person to whom earnings fall to be paid;

then the court may, if it thinks fit, by order (to be known as an attachment of earnings order) require a person appearing to the court to be the defendant's employer in respect of those earnings or a part thereof, to make out of those earnings or part thereof such payments as may be specified in the order”.

Going by the section, in order for an attachment of earnings order to be made, firstly, there has to be a maintenance order that should have been made, and secondly, there must be arrears payable under the maintenance order. There appears to be no discretion granted to the court to make an attachment or earnings order at the time of making a maintenance order, as arrears must have fallen due in order for such an application to be made.

On that basis, I shall not issue an attachment of earnings order, and the amount shall be paid to the applicant. I make no order as to costs, and leave to appeal is granted.

DATED AT LUSAKA THE 29th DAY OF JANUARY, 2020

S. Kaunda

**S. KAUNDA NEWA
HIGH COURT JUDGE**