

Civil Case No. 257/91 CMC

Date of Review: 26th November 1991

Judgement on Review

Muria, J: The Complainant took out a complaint alleging that the Respondent was the putative father of her child.

The Complaint was listed for hearing on 29 September 1991 at which time both parties were not present. The matter was adjourned to 17 October 1991 on which date the Complainant was present but the Respondent did not attend despite being served with a notice of hearing.

At the hearing on 17 October 1991 the Complainant was represented by a Solicitor from the Public Solicitor's Office. As the Respondent did not turn up in court when the matter was called, the solicitor for the Complainant understandably applied to proceed with the hearing in the absence of the Respondent. As it happened, the learned Magistrate agreed for the matter to proceed in the absence of the Respondent. The Complainant gave evidence on oath. At the end of her evidence, the learned Magistrate made a judgement in the following term:

"Judgement in default. Resp. to pay \$25 - maintenance at the end of every month commencing end of this month until child attains the age of 16 years. In order to recover birth expenses of \$265-00 the Resp. has to pay \$10 in addition to \$25 maintenance until the amount is fully recovered."

It is understandable that defendants or Respondents who having been notified of the hearing dates on their cases and failed to turn up can expect their civil case to be dealt with in their absence. The problem the court faces in a case involving the issue of paternity in affiliation cases is that section 5(1) of the Affiliation Separation and Maintenance Act imposes an obligation on the Court to "hear the evidence of the Complainant and such other evidence in support." Section 5(2) only allows the Court to adjudge the defendant as putative father, "If the evidence of the complainant is corroborated in some material particular by other evidence to the satisfaction of the Court." Section 5 (1) and (2) provide:

- (1) *"On the hearing of the complaint, the court shall hear the evidence of the complainant and such other evidence as may be produced in support, and shall also hear any evidence tendered by or on behalf of the defendant.*
- (2) *If the evidence of the complainant is corroborated in some material particular by other evidence to the satisfaction of the court, it may adjudge the defendant to be the putative father of the child, and may also, if it sees fit in all the circumstances of the case, proceed to make against the putative father an order for the payment by him -*
 - (a) *of such sum of money monthly or weekly as the court, having regard to his means, considers reasonable, for the maintenance and education of the child;*
 - (b) *the expenses incidental to the birth of the child;*
 - (c) *the funeral expenses of the child if it has died before the making of the order, and*
 - (d) *such costs as may have been incurred in obtaining the order."*

Thus it can be seen that in all cases evidence must be heard. The Court must hear the evidence of the complainant and such other evidence to corroborate her evidence.

If the Respondent admits the claim then such admission can amount to corroboration of the complainant's evidence. But there was no such admission in this case and so the court must hear the complainant's evidence and such other evidence in support.

In the present case the learned Magistrate only heard the evidence of the complainant and then made the 'Judgement in default.' No attempt was made by the complainant or her solicitor to call 'such other evidence in support' as required by law.

I draw all those concerned in this type of cases to bear in mind the comments of Daly CJ in *S -v- K [1982] SIL 133* and also the comments of Ward CJ in *J -v- S [1985 - 1986] SILR 209* at 213 regarding section 5 of the Act and the standard of proof required in cases of this nature.

Before leaving this matter, there is a further error in the learned Magistrate's judgement and that is, after making 'Judgement in default' he proceeded to order the Respondent to pay \$25-00 maintenance per month commencing at the end of October, 1991 until the child attains 16 years of age without even adjudging the Respondent that he is the putative father of the Complainant's child although when the

order was drawn up by the clerk it says on it that the Respondent was adjudged to be the father of the Complainant's child born on the 20 day of April 1991. A Magistrate's Court is a court of record and care must be taken to ensure that the record correctly reflects what transpires in the court.

In the present case, the learned Magistrates having failed to observe the requirements of section 5 of the Affiliation, Separation and Maintenance Act, 1971, I order by my powers under section 50(2) of the Magistrates' Court Act (Cap.3) that the order made by the learned Magistrate be set aside and remit the matter to the Magistrates' Court to hear the matter de novo.

Order accordingly.

(GJB Muria)

JUDGE