



**MOE v TA (Appeal E126 of 2022) [2024] KEHC 10463 (KLR)
(Family) (29 August 2024) (Judgment)**

Neutral citation: [2024] KEHC 10463 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
APPEAL E126 OF 2022
H NAMISI, J
AUGUST 29, 2024**

BETWEEN

MOE APPELLANT

AND

TA RESPONDENT

(Being an Appeal from the Ruling of Hon. C. C. Oluoch, Chief Magistrate delivered on 17th November 2022 in Nairobi Children’s Case No. 27 of 2013)

JUDGMENT

1. This appeal arises from a matter in the Children’s court. The Respondent herein filed a Plaint seeking maintenance for the child aged 8 years old in such sums as the court may award. No estimate was presented to the Court. The Appellant filed his defence and counterclaim. The matter then proceeded to hearing.
2. Upon hearing the parties and evaluating the evidence before it, the trial court entered judgement on 21 December 2018 as follows:
 - i. Parties shall jointly share legal custody of the minor VAA;
 - ii. The Plaintiff shall have actual custody, care and control of the minors;
 - iii. The Defendant will have access on all Saturdays as from 1000 hours to 1700 hours;
 - iv. The Defendant shall provide rent of Kshs 8,000/- for the minor, VAA. The mother shall top up the balance, if any, and also provide for clothing;



- v. The Defendant shall provide for school fees and school related expenses for the minor. The choice of schools to be agreed mutually by both parents. The fees shall be paid till the child earns either her first degree or diploma;
 - vi. The Defendant to take out a medical cover for the minor or pay medical expenses when need arises;
 - vii. The mother shall provide for all the needs of the minor, MA;
 - viii. Both parties shall the cost of food and other utilities. The Defendant shall contribute Kshs 8,000/= per month while the Plaintiff shall meet the shortfall;
 - ix. Each party shall bear own costs;
 - x. Each party is at liberty to apply
3. This matter seems to have a very long chequered history, post judgement. A cursory look at the proceedings in the trial court following the entry of judgement reveal that thereafter, the matter has come up in court on numerous occasions. The Respondent filed a Notice to Show Cause, which was initially fixed for hearing on 24 October 2019. This was followed by yet another Notice to Show Cause dated 1 September 2019, which was finally heard and determined on 15th October 2020. In its Ruling, the trial court directed that the Appellant do pay the sum of Ksh 314, 798/= within 7 days, failure to which a warrant of arrest would issue.
 4. In November 2021, the Respondent took out another Notice to Show Cause, for arrears amounting to Kshs 597,145/=. Once again, the said Notice to Show Cause was allowed, and the Appellant was directed to pay the outstanding sums within 7 days, failing which the Respondent would collect rent from House no. 9, Komarock Estate, till the debt was cleared in full.
 5. Following several subsequent court appearances, the learned Magistrate handling the matter at the time, disqualified himself from handling the matter, noting that he had engaged severally with the parties and felt that he was unable to assist them. The matter then fell onto Hon. C. C. Oluoch, Chief Magistrate.
 6. When the matter came up on 4 August 2022, the Respondent informed the court of the Appellant's disobedience of the court orders. The Court directed the Respondent to take out a Notice to Show Cause, which was fixed for hearing on 29 August 2022.
 7. On 29 August 2022, the trial court issued a warrant of arrest against the Appellant. The Appellant then appeared in court on 2nd November 2022. By the time the matter came up in court on 17th November 2022, the Respondent claimed arrears of Kshs 607,270/= against the Appellant. In its directions, the Court stated as follows:

“I have considered the Notice to Show Cause and the tabulations presented by the Plaintiff on the outstanding amount. I do agree with the Defendant that there may have been a change of circumstances as the minor is now in a boarding school. However, as I give these directions, I cannot tell when this happened. The Defendant has not provided any evidence in that regard. It was incumbent upon him to move the court as soon as the child joined a boarding school, to review the orders. Otherwise, the Plaintiff is justified in claiming arrears outstanding to date. Moreso, because the previous trial magistrate had found that he is indebted to the Plaintiff to the tune of Kshs 587,145/-. The Defendant did not challenge



the said findings. I cannot reverse that decisions as doing so will amount to sitting on appeal against”

8. Aggrieved by the Ruling of the trial court, the Appellant lodged this appeal on 20 grounds. On 14 March 2024, the Court gave directions that the appeal be canvassed by way of written submissions. Each party was directed to file their respective submissions within 14 days. By the time of writing this judgement, only the Respondent had filed her submissions.
9. Without the benefit of submissions from the Appellant, and bearing in mind that both parties are acting in person, it is extremely difficult for this court to comprehend the grounds of appeal herein. Some of the grounds relate to previous Notices to Show Cause which had already been heard and determined by the court. The Appellant has made reference to a response to the Notice to Show Cause of November 2022. Unfortunately, the same is not contained in the Record of Appeal filed by the Appellant. The court, therefore, has no benefit of knowing whether the said response exists or its contents.
10. What is clearly discernible is that there was a court order, which the Appellant was expected to adhere to, but did not. This necessitated the action by the Respondent. Although the Appellant may have had valid grounds for not paying the sums towards school fees and maintenance due to change of circumstances, he did not move the court to review or vary its orders. As such, the orders of the court remained and it was incumbent upon the Appellant to oblige.
11. Equity does not aid the indolent. If the Appellant felt aggrieved by his financial obligations in light of the changed circumstances, he ought to have moved the trial court appropriately.
12. The appeal lacks merit and the same fails. The interim orders of 2nd June 2023 are hereby vacated. Since this is a children’s matter, each party shall bear their own costs.

DATED AND DELIVERED AT NAIROBI THIS 29 DAY OF AUGUST 2024

HELENE R. NAMISI

JUDGE

Delivered on virtual platform in the presence of:

.....N/A.....for the Appellant

Respondent in person

