



**NNN v DM (Civil Appeal E144 of 2023)  
[2023] KEHC 26008 (KLR) (30 November 2023) (Ruling)**

Neutral citation: [2023] KEHC 26008 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CIVIL APPEAL E144 OF 2023  
PJO OTIENO, J  
NOVEMBER 30, 2023**

**BETWEEN**

**NNN ..... APPELLANT**

**AND**

**DM ..... RESPONDENT**

**RULING**

1. When to set aside a consent order is now well settled. It may be done by a consent or when a vitiating factor is disclosed and proved. (*Flora Wasike -Vs- Desmond Wamboko* (1980) eKLR)
2. The notice of motion dated 8.11.2023 and filed in court on 9.11.2023 seeks the review or setting aside of the orders made on 26.10.2023 and that the respondent be ordered to make provisions for the minor.
3. From the record of the file, the substantive orders were by consent and concerned the minor being with the mother for the entire month of November 2023 and with the father during the entire month of December 2023.
4. In addition, parties were referred to court annexed mediation to be concluded within 45 days from the same date.
5. The court pays due regard that mediation when properly conducted in good faith, has the potential to resolve the entire dispute and is thus cautious not to preempt the process. Let all issues capable of addressing the best interest of the child be addressed at the court annexed mediation.
6. However, it is also the view of the court that for the best interest of the child to be met, the two parents must climb down and talk over the child and her welfare.
7. For that reason, parties are encouraged to talk more and 0put the best interest of the minor above their own. In that regard the court shall slightly tamper with the orders of 26.10.2023.



8. To facilitate the interaction between the two parents, over the best interest of the child, the mother will hand over the child to the father on 1.12.2023, the father will also personally hand over the child to the mother on 23.12.2023 to enable he child spend the Christmas period with the mother but on condition that the child is returned to the father by 27.12.2023 to enable her be with him till 2.1.2024. The mother will take custody of the child on that 2.1.2024.
9. Only to the extent of the child being with the mother over Christmas and being with the father during the New Year, purely on account of trying to meet the best interest of the child, I do revisit the orders of 26.10.2023.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 30<sup>TH</sup> DAY OF NOVEMBER, 2023**

**HON. P.J.O. OTIENO**

**JUDGE**

**In the presence of:**

N/A Mr. Munyendo for the Appellant

N/A Mr. Ondieki for the Respondent

Court Assistant: Polycap Mukabwa

