



MW v EBM (Civil Appeal 52 of 2017) [2022] KEHC 9983 (KLR) (Family) (30 June 2022) (Ruling)

Neutral citation: [2022] KEHC 9983 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
CIVIL APPEAL 52 OF 2017
AO MUCHELULE, J
JUNE 30, 2022

BETWEEN

MW APPLICANT

AND

EBM RESPONDENT

(Being an appeal arising from the ruling in Children Case No. 468 of 2013 delivered by Hn. T.B. Nyangena Senior Principal Magistrate in the Nairobi Children's Court on 7th July 2017)

RULING

1. The dispute between the applicant MW and the respondent EBM is over their 10-year child NSB. The matter was filed in the Children Court at Milimani Cause No. 468 of 2013 in which the applicant sought legal and physical custody of the child, and that the respondent pays for its maintenance. Various orders were given by the Children Court. Ultimately, there was a decision on July 7, 2017 following a Notice to Show Cause. An appeal was lodged to this court on August 2, 2017. The appeal was dismissed on January 7, 2019 by Justice Farah S.M. Amin who continued to make certain orders. On February 17, 2019 Justice J.N. Onyiego indicated that the appeal having been dismissed this court was functus officio.
2. It does appear that the respondent is in arrears, whether after the orders of the Children Court or the High Court, or both. The applicant filed a Notice to Show Cause dated April 23, 2021 before this court seeking the respondent's committal to civil jail. In the application dated June 10, 2021 by the respondent he is seeking that the Notice to Show Cause be set aside. He states that he has been made a cash cow, because the applicant has not accounted for what she has received from him on account of the child, and that she has not met her bargain over the child now that parental responsibility should be equally shared between them.



3. Under section 101 of the *Children Act* (Cap. 141) it is the Children Court that has the powers to enforce any orders of maintenance, or to deal with the case where a party has failed to comply with any orders issued by the court. The court shall make inquiry about whether or not the person against whom the orders were made has complied, will inquire into the issue of arrears, the ability of the person to pay, and so on. Where the court is satisfied that the respondent has failed to make payment of any financial provision under the maintenance order or a contribution order, the court may make any of the orders under subsection 5.
4. The application dated April 23, 2021 by the applicant and the application dated June 10, 2021 by the respondent materially deal with the question whether or not the respondent has complied with the order by the Children Court and by this court regarding the maintenance of their child. I determine that this court lacks the primary jurisdiction to inquire into the issue and to enforce the orders of the respective courts. The parties should approach the Children Court with appropriate applications.
5. As I ask that each party bears own costs on each application, I direct that, if the Children Court file is before this court, the same be released to the Court for the parties to move as may be necessary.

DATED AND DELIVERED AT NAIROBI THIS 30TH DAY OF JUNE 2022.

A.O. MUCHELULE

JUDGE

