



**AWA v VKK (Civil Case 4 of 2018) [2022] KEHC 9977 (KLR) (Family) (23 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 9977 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**  
**FAMILY**  
**CIVIL CASE 4 OF 2018**  
**AO MUCHELULE, J**  
**JUNE 23, 2022**

**BETWEEN**

**AWA ..... APPLICANT**

**AND**

**VKK ..... RESPONDENT**

**RULING**

1. In the notice of motion dated 11<sup>th</sup> March, 2020 and filed on 13<sup>th</sup> March, 2020, the applicant AWA sought the following orders:-

- “1) That this Honourable Court be pleased to find, hold and declare the defendant/respondent is in contempt of this Honourable Court’s orders from the judgment issued by the Hon. Lady Justice Asenath Ongeru on 7<sup>th</sup> June 2019;
- 2) That accordingly, this Honourable Court be pleased to mete out appropriate punishment to the said VKK for contempt of this Honourable Court’s Orders including but not limited to detaining her in prison for a period of not less than six (6) months or such period that this Honourable Court deems just and appropriate until she has duly complied with the court order issued and has furnished the plaintiff/applicant herein with original birth certificate of the minor JWA for rectification required by the Director General;
- 3) That accordingly, this Honourable Court be pleased to mete out further appropriate punishment to the said VKK for contempt of this Honourable Court’s orders including the payment of Kshs.200,000/= for contempt of court orders.
- 4) Any other or further orders of the court geared towards protecting the dignity and authority of the court; and



5) Costs of this application be provided for.”

2. The history of this case is that the applicant AWA and the respondent VKK had a relationship in the year 2010. A child was born on 3<sup>rd</sup> March 2011 and the respondent got it to bear the applicant’s name in the Birth Certificate. The applicant disputed paternity, and filed this cause seeking that his name be removed from the Birth Certificate. He sought DNA to confirm that he was not the father of the child. DNA was subsequently conducted. It proved that he was not the father.
3. On 4<sup>th</sup> June 2019 M/S Akello for the applicant and Mrs. Amani Ndungu for the respondent entered into a consent in the following terms:-
  - (a) the applicant’s names to be removed from the Birth Certificate of the minor as the father of the minor;
  - (b) however, the respondent be at liberty to maintain the name WA without parental responsibility from the applicant;
  - (c) the applicant has withdrawn the claim for damages against the respondent;
  - (d) each party to bear its own costs of the suit; and
  - (e) the Registrar General to effect the changes.
4. In the grounds and supporting affidavit to the application, the applicant alleged that the respondent had breached the terms of the consent and that was why he was seeking that she be found to be in contempt and be punished for it. He stated that it was a term of the consent that the respondent does furnish him with the original Birth Certificate of the minor for him to transmit it to the Registrar General of Births and Deaths to effect the changes therein by removing his name as the father. He had written a letter to the respondent’s advocates seeking the original Birth Certificate but has received no response.
5. The application had not received any response.
6. For the applicant to succeed in his application, he has to prove that the respondent had wilfully and deliberately disobeyed the orders contained in the consent that the parties through their counsel entered into on 4<sup>th</sup> June 2019. In particular, the applicant has to show that the consent order required the respondent to furnish his advocates with the child’s original Birth Certificate for him to transmit it to the Registrar General for rectification of the name, but that she had not so furnished his advocates. This point is emphasised because, it is a requirement that the order alleged to have been breached must state clearly and unequivocally what should or should not be done (*Katsuri Limited –vs- Kapurchand Depor Shah* [2016] eKLR). In *Gatharia K. Mutitika and Others –vs- Baharini Farm Limited* [1982-88] 1 KAR 863, it was held that in cases of alleged contempt, the breach for which the alleged contemnor is cited must not only be precisely defined but also proved to the standard which is higher than proof on a balance of probabilities but not as high as proof beyond reasonable doubt. The standard is this high because the contemnor may be asked to serve a jail term, if the contempt allegation is proved.
7. I have considered the consent order. It did not provide that the respondent was to hand over the original Birth Certificate of the child to the advocates of the applicant for them to hand it over to the Registrar General to remove his name as the father. Because the Registrar General was the one asked by the order to effect the changes in the Birth Certificate, it was expected that he was the one who, upon service, was going to call for the original Birth Certificate from the respondent and effect the changes. It follows that



the complaint contained in the application was not supported by the consent order that was entered into on 4<sup>th</sup> June 2019.

8. The result is that the alleged contempt was not proved, and therefore the application is dismissed.

**DATED AND DELIVERED AT NAIROBI THIS 23<sup>RD</sup> DAY OF JUNE 2022.**

**A.O. MUCHELULE**

**JUDGE**

