



REPUBLIC OF KENYA



KENYA LAW
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**GMB v RWG (Civil Appeal E011 of 2021)
[2022] KEHC 14640 (KLR) (27 October 2022) (Judgment)**

Neutral citation: [2022] KEHC 14640 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E011 OF 2021
TW CHERERE, J
OCTOBER 27, 2022**

BETWEEN

GMB APPELLANT

AND

RWG RESPONDENT

*(Appeal against judgment and decree in Isiolo Kadhi Divorce Cause
No. 53 of 2019 by Hon. A.H.Athman (PK) on 09th December, 2019)*

JUDGMENT

1. GMB (Appellant) and RWG (Respondent) are parents to AGM (Child) who was 4 years old as at December, 2019.
2. By a judgment dated 09th December, 2019, the trial court dissolved the marriage between the parties herein. The court further directed appellant to pay maintenance of the child in the sum of Kshs 15,000 per month

The Appeal

3. The appellant being dissatisfied with the lower court's decision preferred this appeal on the grounds that: -
 1. He was not served with pleadings
 2. The learned Kadhi failed to consider that maintenance is shared responsibility
 3. The amount payable as maintenance is 80% his earnings



Analysis and Determination

4. I have considered the evidence on record, the appeal and the submissions on behalf of the Appellant, the respondent having not participated in the appeal and the issues for determination are as stated in the grounds of appeal.
5. On the first issue, appellant contends that he was not served with pleadings in the trial. order 10 rule 11 provides that

Where judgment has been entered under this order the court may set aside or vary such judgment and any consequential decree or order upon such terms as are just
6. The trial court record reveals that appellant did not apply to set aside the *ex parte* judgment. That issue not having been raised with the trial court cannot be determined on appeal and it must fail.
7. Concerning the second issue, the law relating to maintenance of a child is contained in the [Constitution of Kenya](#), 2010 and the [Children Act](#). Article 53 of the [Constitution](#) provides:
 - (1) Every child has the right–
 - (e) to parental care and protection, which includes equal responsibility of the mother and father to provide for the child, whether they are married to each other or not;
8. The foregoing provisions undoubtedly provides that maintenance is an aspect of parental care and is the responsibility of both parents of a child and in this case, I agree with the appellant that both parties in this case have a shared responsibility to maintain the child of the marriage.
9. In respect of the third issue, section 94(1) of the [Children Act](#) stipulates the considerations by which the court shall be guided when making an order for financial provision for the maintenance of a child. These considerations include *inter alia*:
 - (a) The income or earning capacity, property and other financial resources which the parties or any other person in whose favour the court proposes to make an order, have or are likely to have in the foreseeable future;
 - (b) the financial needs, obligations, or responsibilities which each party has or is likely to have in the foreseeable future;
 - (c) the financial needs of the child and the child's current circumstances;
 - (d) ...
10. The evidence adduced at the trial is that appellant is a police officer and respondent an ECD teacher. In considering provision of maintenance of children, the trial Court was under a duty to take into account the income or earning capacity, property and financial resources of both parties, both then and in the foreseeable future. The trial Court was also to consider the parties' financial needs, obligations, or responsibilities. As regards, the children the court was required to bear in mind their financial needs and circumstances.
11. The evidence on record discloses that as at the time of making the order for maintenance, respondent neither disclosed her earnings nor the appellant's. The parties however concede they are in gainfully employed and both have a lawful shared responsibility to provide for their child.
12. After taking into account all the foregoing factor and the fact that both parties are guilty of non-disclosure of their earnings, I set aside the order of maintenance at KES 15,000 monthly and order that



the appellant shall pay KES 10,000 being his share of monthly contribution payable on or before the 5th day of each month.

13. This being a matter concerning the parties' child, each party shall bear its own costs.

DATED AT MERU THIS 27th DAY OF October 2022

WAMAE. T. W. CHERERE

JUDGE

Appearance

Court Assistant - Morris Kinoti

For Appellant - N/A for Kiogora Mugambi & Company Advocates

For Respondent - Mr. Otieno C for Otieno C. & Company Advocates

