



REPUBLIC OF KENYA



KENYA LAW
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**ABM v SWO (Civil Appeal E131 of 2021)
[2022] KEHC 15350 (KLR) (Family) (17 November 2022) (Judgment)**

Neutral citation: [2022] KEHC 15350 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**FAMILY
CIVIL APPEAL E131 OF 2021**

AO MUCHELULE, J

NOVEMBER 17, 2022

BETWEEN

ABM APPELLANT

AND

SWO RESPONDENT

(Being an appeal the decision of the Children's Court by Hon. G.M. Gitonga delivered on 15th October 2021 in Children's Court Case No. 1249 of 2014)

JUDGMENT

1. In the chambers summons dated September 7, 2021 filed by the appellant ABM (suing as the mother and next friend of the minors AW and UN) it was alleged that the respondent SWO had failed to pay the Kshs 10,000/= monthly towards the food expenses for the second minor which amount had been ordered on April 10, 2015 by Hon E Boke (resident magistrate) beginning March 8, 2015; and Kshs 20,000/= monthly towards the 2nd minor's food and medical expenses starting September 5, 2021. In the supporting affidavit in paragraph 6, the appellant had deponed as follows:-

' 6. That the defendant has refused to provide the said amounts since the month of May 2020 to August 11, 2021, save for April 2021, May 2021 and July 2021 (6,000) thereby accumulating an arrears of Kshs 134,000/='

2. In the ruling delivered on October 15, 2021 by Hon GM Gitonga (principal magistrate) it was indicated among other things that:-

' For example, I note from the application on record, the plaintiff did not indicate the particular months in respect of which Kshs 134,000/= accumulated.'



This was one of the reasons he declined to allow the application in which the appellant sought that the amount be paid by the respondent because he was in arrears.

3. It is clear that the alleged arrears were in respect of specified months and therefore the trial court fell into error when it stated that the months were not indicated. The court was obligated to interrogate the evidence on both sides to determine whether indeed the stated months had errors. It did not do this. The result was that the appellant's application regarding the arrears for the months did not receive the court's consideration.
4. The non-consideration of the evidence that the appellant has placed on record would go against the tenets of a fair trial under article 50 of the Constitution. Such consideration would not prejudice the respondent, but would instead promote the rule of law and interest of justice.
5. It is for this reason that I allow the appeal, and remit the application dated September 7, 2021 for rehearing and determination before another magistrate in the children court at Nairobi.
6. I make no order as to costs as the respondent was not responsible for what happened.

DATED AND DELIVERED AT NAIROBI THIS 17TH DAY OF NOVEMBER 2022.

A.O. MUCHELULE

JUDGE

