



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

MISC. CIVIL APPL. NO.14 OF 2018

MKN.....APPLICANT

VERSUS

JC.....1ST RESPONDENT

CHILDREN COURT AT KERICHO.....2ND RESPONDENT

RULING

1. This is an application dated 26th April 2018 filed by MKN. It was filed under Order 42 Rule 6 of the Civil Procedure Rules and section 1 and 3A of the Civil Procedure Act (Cap. 21).

2. The application was filed against two respondents including the Children Court seeking the following orders-

1. (spent)

2. (spent)

3. That this court be pleased to review, vary set aside and or alter the orders issued on 23rd April 2018 by Hon. B. Limo in Kericho Children Case No.21 of 2016.

4. That costs of the application be in the cause.

3. It was filed with a supporting affidavit sworn by the applicant on the 20th April 2018. In the affidavit it was stated that in judgment dated 3rd March 2017, the court ordered the applicant to pay kshs.350,000/- per year, which was kshs.30,000/= per month which triple the initial figure and quite exorbitant, while parental responsibility was 50:50 basis. It was also deponed that the 2nd respondent – the children court went ahead and ordered the applicant to pay the plaintiff (1st respondent) kshs.1,000,000/- in ten days as from 23rd April, 2018. A copy of judgment of the trial court dated 3rd March 2017 and a ruling dated 26th May 2016 were also filed.

4. Both the applicant and the 1st respondent filed affidavits of means with the applicant stating that he was now employed at New-Edge Technologies earning a net pay of Kshs.40,000/- per month and a further kshs.10,000/- per month from tea farming, and that he was paying kshs.15,000/= to the 1st respondent monthly as child maintenance.

5. The 1st respondent in her affidavit of means stated that she was a university student at KCA University and had no income, and sought kshs.102,000/= per month from the applicant for the upkeep and fees for the children.

6. Both the applicant and 1st respondent filed written submissions to the application. At the hearing, MKN stated that he relied on his written submissions and did not want to add anything. JC stated that the first child was initially schooling in Nairobi and she had to shift the child to Kericho. She added that her parents were hostile to MK because of the way he had treated her.

7. I have considered this matter, which is a children matter. Article 53 (2) of the Constitution provides as follows-

“53 (2) A child’s best interests are of paramount importance in every matter concerning the child.”

8. I am thus required to give paramount importance to the children – who are not the litigants herein.

9. The Children Act – 2001 gives equal parental responsibility for the welfare, upkeep and education of children. Therefore the parties herein as parents have equal responsibility for the children.

10. This matter has already been dealt with by the Children court, which in my view is a better court placed to deal with the issues of the children as they evolve, and take evidence from witnesses, which this court cannot do. Hon. Justice Mumbi Ngugi on 20th July 2018 put the contribution of MK towards the children at kshs.15,000/= per month. The Children Officer was to file a report which I have not seen.

11. In the interest of justice, I retain the order of Mumbi Ngugi J. until this court receives the report of the Children Officer. I will put the matter for mention for the Children Officer's report to be filed.

Dated this 19th day of June 2019.

George Dulu

JUDGE