



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KIAMBU**

**CIVIL APPEAL NO. 1 OF 2017**

**G M N..... APPELLANT**

**VERSUS**

**T M.....RESPONDENT**

**JUDGMENT**

1. On 08/12/2010, the Learned C. Oluoch entered judgment in a Children's Cause brought by the Respondent against the Appellant for maintenance of the Appellant's two children with the Respondent for Kshs. 6,000/= per month. The Learned Trial Magistrate arrived at that figure based on a Parental Responsibility Agreement the parties had signed and in the absence of evidence of means of the Appellant.

2. Though the Appellant filed a Defence to the Respondent's claim, he did not appear to adduce evidence and he did not file any documentation about his means.

3. About six years later, on 16/06/2016, the Respondent took out a Notice of Motion asking, among other things, for orders that the maintenance order given be enhanced to Kshs. 80,000/= per month. In that same Application, the Respondent requested for interim orders for the payment by the Appellant of school fees amounting to Kshs. 30,000/=.

4. At the ex parte stage of the Application, the Court ordered the Appellant to immediately pay the Kshs. 30,000/= for school fees on or before 28/06/2016. The Court then set the Application for inter parties hearing on 07/07/2016.

5. The Appellant responded with his own Application dated 29/08/2016 in the main requesting for a review of the Court orders that he pays the Kshs. 30,000/= he had been ordered to pay pending the hearing and determination of the Respondent's Application.

6. The Court heard the two Applications simultaneously and rendered a ruling on 16/12/2016. In that ruling, the Learned Trial Magistrate declined to vary the Court Orders of 08/12/2010 but ordered the Appellant to continue paying the Kshs. 6,000/= towards upkeep of the children as per the orders of 08/12/2010 and, in addition, to pay school fees for the children as per the fee structure as well as all school related expenses.

7. The Appellant is aggrieved by the portion of the Learned Magistrate's order that requires him to continue paying Kshs. 6,000/- per month and has asked this Court to stay or revise that part of the order. He says he has no problem paying the school fees and school-related expenses.

8. The Appellant's reasoning in objecting to the payment of maintenance of Kshs. 6,000/- per month, as I understand it, is the following. He argues that parental responsibility is to be shared between the mother and the father. As the father, by paying all the school fees for children who are in boarding school, it means, in his estimation, that he is paying for their food, shelter, and education. Therefore, the Appellant argues, the only items in the children's needs that are not covered are clothing and medical care. Since, the Appellant argues, the children are in school uniform most of the time they only need extra clothing

during school uniforms. Also, since their basic medical needs are covered in school, not much is needed for that item.

9. The Appellant's argument, then, is that he should not be required to pay the Kshs. 6,000/- per month due to the change in circumstances.

10. The Respondent, on the other hand, is of an entirely different opinion. She not only asks the Court that the amount be kept but that it should be enhanced to the amount she had asked the Lower Court to enhance it to i.e. Kshs. 80,000/- per month. She has included a lengthy affidavit in which she has attempted to show that the Appellant is a man of means who can afford to pay for these amounts yet he lets his children live in near misery conditions since she only works as a clothes-trader.

11. In her submissions before the Court, the Respondent reiterates the parental responsibility of both parents and endeavours to show that the Appellant does not have the best interests of the children at heart. She insists that due to the changed circumstances the amount of Kshs. 6,000/- ought to be enhanced.

12. It is important to recall the procedural posture of the case. The Application before me is a narrow one by the Appellant who seeks to have the payment of Kshs. 6,000/- suspended owing to changed circumstances. This Court has not heard a fully-fledged hearing to determine the means of the parties and how much each should contribute towards the upkeep of their children. This is an appeal from the decision by the Learned Trial Magistrate on how the parental responsibility should be shared. I will therefore only address that narrow issue.

13. In my view, the argument by the Appellant that the payment of Kshs. 6,000/- should be suspended because he now pays all the school fees and school-related expenses cannot hold. First, his very argument about changed circumstances militates against his proposal. The Parental Responsibility Agreement was signed more than seven years ago when the children were of tender years. There is no question that their needs have increased as they grew. At the time of the agreement, they were nine and four years old respectively. They are now sixteen and eleven. As the Respondent correctly argues, the minors' needs go far beyond school fees. They include their shopping for school; pocket money; their upkeep while they are home; medical expenses while at home; modicum of entertainment; their bus fare to school and so forth.

14. It appears readily ridiculous to me to argue that once a father has paid school fees for his children, he has covered all the basic needs of the children. It would be equally ridiculous to suspend or revise downwards a maintenance award of Kshs. 6,000/= imposed more than seven years ago in the face of inflation, rising costs of living and the increasing demands of the children.

15. For this reason, I will dismiss the Application with costs.

16. Orders accordingly.

**Dated and delivered at Kiambu this 29th day of January, 2018.**

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**JOEL**

**NGUGI**

**JUDGE**