



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION
DIVORCE 65 OF 2003

C I K.....PLAINTIFF/RESPONDENT

VERSUS

S W
I.....DEFENDANT/APPLICANT

RULING

PLEADINGS

By an application filed on 24th June, 2015, the Applicant sought the Petitioner to refund Ksh.46, 000/= paid as school fees and to pay school fees to the 2 children of the marriage.

The Respondent filed a Replying Affidavit on 9th July, 2015 and informed the Court they divorced in 2005. He has paid maintenance Ksh.10, 000/= a month since then and paid school fees for the 2 children of the marriage until they completed formal education.

With regard to the last child DK, he was not informed and he did not know his whereabouts until the matter was brought to his attention.

The first 2 children are adults and working and it is only the youngest child who is in formal education and he accepts to pay his school fees.

The Applicant stated DK1 is in Nyahururu High School and had fees arrears of Ksh. 15,300/= as per school documents attached to the application.

The issue of the other child; JN wants to join University and study but lacks fees to enable her take studies. The Applicant later presented the School fees schedule from Nazarene University vide a Supplementary Affidavit filed on 14th September,2015 through the Registry, Family Division.

The Applicant is unemployed. She ran a business that is not doing well financially. She is not able to sustain food, clothing, shelter and school expenses.

The Respondent has a well- paying job in a national institution. Although he paid school fees for the 2 children who are now adults, the Applicant is not able to facilitate the education needs of the 2 children.

The Court perused the Court file and confirmed the parties divorced in 2005. The Respondent was to pay school fees for the children and maintenance of 7,000/= each month. Later the amount was increased to Ksh.10, 000/= each month.

LAW

The Law on Children rights is well settled by virtue of **Article 53 (2) of the Constitution 2010 and Section 4 of the Children Act 2001.**

Parental responsibility is prescribed by Article 53 (1) (e) of the Constitution 2010 and Section 23 and 24 of the Children Act, 2001.

It is shared responsibility of both parents of the child to make adequate provision for the child's emotional, physical and social wellbeing and development. Shared parental responsibility is pegged on each parent contributing to material needs of the child and providing social support for the child's growth and development.

ANALYSIS

The Court finds that in upholding the best interests of the child the DKI who is in Nyahururu High School shall continue to pursue his studies. The applicant's financial position is not contested by contrary evidence. The Petitioner /Respondent is able and willing to carry out his parental responsibility over the child and pay his fees. Although the parents separated, they have obligations and responsibility to the child. The Applicant as the resident parent shall provide food, clothing and shelter for the child.

The Respondent shall pay school fees for the Child directly to the School as required. He shall also pay school fees expenses; school uniform, books, stationary and transport for child.

With regard to JN, the older child of the marriage was educated right up to Mass Communication College.

She expressed desire to pursue further education in form of university studies to her father, the Respondent. He did not pay her fees to join Nazarene University. The Applicant provided Nazarene University's payment schedule in a supplementary affidavit that was filed after the hearing of the application and was not served to the Respondent. He would not have had the opportunity to prepare and address the issue in Court himself or through Counsel. At this stage, it would be prejudicial to determine this question on evidence or information provided after the hearing without the Respondent's involvement.

The Respondent informed the Court, he paid school fees for his daughter JN for her formal education fees up to College education. The Applicant did not present any admission and fee structure for her education.

Section 23 of the Children Act, 2001 defines parental responsibility and includes the duty to maintain the child and in particular provide adequate diet, shelter, clothing, medical care and immunization, education and guidance;.....

Section 91 of the Children Act, 2001 prescribes a proviso that a person who has attained the age of 18 years may, with the leave of the Court apply to the Court for a maintenance order to be made in his /her favor in the following circumstances;

The person is or will be involved in education and training which will extend beyond the person's 18th birthday.....[among other special circumstances]

In the instant case, this Court relies on a similar fact case of

P M W vs D N W [2005] eKLR which confirmed that a parent could be ordered to pay for the child's

education even after the child attained 18 years as long as the Applicant applied to the Court and satisfied the Court in terms of Section 23 and 91 of the Children Act respectively.

FINAL ORDERS

Therefore, the child JN who is above 18 years; has to apply under **section 23, 28 and 91 of the Children Act, 2001** and serve the Respondent with details of admission and Fee structure.

In sum the Court orders as follows;

1. **The Respondent to pay school fees and school expenses of DKI**
2. **The Child JN to apply and serve the Respondent and satisfy provisions of section 23, 28 and 91 of the Children Act, 2001 for the Court to consider and determine the payment for University education**
3. **There will be no orders as to costs**

READ AND SIGNED IN OPEN COURT AT NAIROBI THIS 25TH DAY OF SEPTEMBER, 2015

M.W. MUIGAI

JUDGE

In the presence of:

Counsel for the Petitioner.