



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL APPEAL NUMBER 121OF 2014

W M.....APPELLANT

VERSUS

D M K.....RESPONDENT

(An appeal from the judgment of Hon: J. NTHUKU S.R.M. Nakuru Chief Magistrate's Court Children's Case Number; 30 of 2012 delivered on 5th August 2014))

JUDGMENT

1.The appeal arises from the **Childrens' Case No. 30 of 2012** at the **Childrens' Court at Nakuru**. The matter concerned maintenance of the issue of the relationship between the parties where one **E K** (minor) suing through his mother the appellant sought orders that the Respondent, being the biological father of the minor do provide financial contribution for the upkeep and maintenance of the minor.

On the 5th August 2014, the trial magistrate determined that the Respondent and father of the child would cater for the child's clothing and medical needs whenever they would arise together with school fees and all school related expenses including but not limited to uniform, books and transport. The appellant was given responsibilities of custody, shelter and providing food to the minor. It is the above parental responsibilities as determined by the Childrens' Court that the appellant, the mother of the minor has appealed from.

2. In her appeal she faults the Chilrens' Court by stating that it did not share equally the parental responsibilities as it failed to recognise that the Respondent is in gainful employment as a teacher and that she was not in gainful employment and asking that her to provide for food and shelter was not within her means. She has urged this court to vary the trial court's judgment and order that the Respondent to fully cater for the minor in terms of school fees, food medical care and clothing.

3.The appeal is opposed. Mr. Machage Advocate argued the appeal for the Respondent while the appellant was unrepresented.

This court has considered the grounds of appeal as stated and arguments before the trial court, its judgment and submissions before me on the 16th November 2015.

Before the trial court, the appellant stated the child's needs as follows:

- **Food** - **Kshs.300/= per day**

- **Transport** - **Kshs.150/= per day**
- **Food at school** - **Kshs.400/= per month**
- **Uniform** - **Kshs.5,000/= per two terms**
- **Rent** - **Kshs.2,500/= per month**
- **Clothing** - **Kshs.6,000/= per year**
- **Medical needs whenever necessary**

In her own volition, the appellant undertook to provide shelter and clothing. She asked the court to direct that the Respondent provide food, school and medical needs. On cross examination, she reiterated that the Respondent should provide food and all school needs.

4. The Respondent on his part stated that he is a teacher at [particulars withheld] Secondary school, is married with three children the eldest in secondary school, that he pays in total Kshs.100,000/= per year being school fees and other needs for the first child. For the other two children, he stated that he pays Kshs.10,000/= per year towards their school needs, and that he was willing and ready to provide all school needs for the subject minor until he completes University education, would buy school uniform, pays school fees, transport and other educational needs, and clothing.

5. Under the **Children Act**, both the mother and father have equal responsibility towards maintenance and upbringing of the minor child.

The trial court rationalised that since the minor would be staying with the appellant and eating the same food, she should cater for shelter and food.

6. The appellant's plea to this court is that she does not have enough finances to buy food for the minor after paying rent from her casual jobs earnings. She insisted that what she needs is money to enable her buy food for the minor. She even proposed that she would provide clothing as she is the one who understands the clothing needs of the child since she has his custody.

7. Mr. Machage argued that the trial court's judgment and distribution of parental responsibilities was very fair as the Respondent had undertaken to provide for the subject in all school needs upto University level whose costs would be enormous. He urged that the appeal be dismissed.

8. I have revisited the evidence before the trial court. The only issue for determination is over who should provide food, an amount estimated at Kshs.9,000/= per month as stated by the appellant. This item as observed by the trial court **“she eats together with the minor---**” She has no permanent source of income as she does manual jobs, where she said makes about Kshs.200/= per day. The appellant did not prove by any documentary evidence the earnings by the Respondent who has other three children to take care of.

I find the Respondent to be a generous father to all his children including the minor subject hereof. He has undertaken to take care of all the educational needs of the minor upto the level he may go to including university. This includes his food while in school.

The appellant has urged the court to compel the Respondent to get a better school for the minor. It is the courts direction that both the appellant and the respondent consult and come up with a better school, where the minor can continue with education in a better environment, and where the Respondent will continue to provide all school related needs.

Upon considering and evaluating the circumstances of both the Appellant and the Respondent, it is my view that the Childrens Court arrived at a reasonable and fair distribution of parental responsibilities.

I find no ground upon which to vary or set aside the trial court's judgment.

The appeal is dismissed with no orders as to costs.

Dated, signed and delivered in open court this 18th day of December 2015

JANET MULWA

JUDGE