

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CIVIL APPEAL NO. 8 & 14 OF 2012

(Appeal arising from the judgment of [P.N. ARERI, SRM]

dated 4.1.2012 in Kakamega Chief Magistrate Court,

Children's Case No. 99 of 2010)

E S L APPELLANT

V E R S U S

G M B RESPONDENT

J U D G M E N T

The appellant herein filed Children's Case No. 99 of 2010 at the Kakamega Chief Magistrate's Court against the respondent. The bond of contention is the school fees and maintenance of two children of the two parties. On the 27.4.2011 the trial court ordered the respondent to pay KShs.5,000/= per term for each child and KShs.2,000/= per month per child for food and medical needs. According to the appellant the respondent defaulted and she filed an application dated 4.8.2011 seeking to have the respondent's salary attached. On the 4.1.2012 the court granted the prayer of attachment of the salary and directed that KShs.6,000/= be attached every month. The appellant was not satisfied as there was arrears of KShs.19,800/= due from the respondent and also the sum of KShs.6,000/= is a variation of the decree.

On the other hand the respondent was not satisfied with the attachment of his salary and filed Civil Appeal No. 14 of 2012. The appeals were consolidated and parties agreed to file written submissions. I have gone through the memorandums of appeal for each party and the submissions by both counsels. According to the appellant the respondent was supposed to pay KShs.10,000/= per term and KShs.4,000/= per month. Her application of 4.8.2011 had indicated that there was arrears of KShs.19,800/= but that was not included in the ruling. The appellant would like to have the earlier orders effected and the arrears included in the payment. On his part, the respondent in his cross appeal maintains that he had complied with the earlier orders and the attachment of his salary was uncalled for. Further, the court did order the attachment of his salary without an assessment of his means.

The evidence on record shows that when the earlier ruling of 27.4.2011 was made nobody appealed. It is also confirmed from the record that the respondent is not denying his responsibility on the two minors. The only dispute is the compliance with the court orders so that the children can remain in school and their monthly maintenance paid. In response to the application for attachment of the salary, the respondent did not complain that he cannot afford the amount that had initially been awarded. In his replying affidavit sworn on the 17.8.2011 the respondent annexed receipts for school fees for 2nd term totaling KShs.8,200/=. According to the appellant that left arrears of KShs.3,800/= which she had to pay. Apart from payment of the school fees the respondent did not indicate in his affidavit that he was also paying the monthly maintenance. I believe the appellant was claiming four months maintenance totaling KShs.16,000/= and the extra KShs.3,800/= making the total of KShs.19,800/=.

The initial amount granted by the court was KShs.10,000/= per term making a total of KShs.30,000/= per year for school fees. The sum of KShs.2,000/= per month per child makes a total of KShs.4,000/= per month. This is KShs.48,000/= per year. The yearly amount is KShs.78,000/= (30,000 + 48,000). Breaking the yearly amount into monthly installments will give a monthly sum of KShs.6,500/=. The court allowed an attachment of KShs.6,000/=. The only dispute therefore is only

KShs.500/= per month. The complaint by the respondent that he had complied with the earlier orders is misplaced as there is no proof of compliance with the order for maintenance of KShs.4,000/= per month. There is no good reason to remove the attachment of the respondent's salary. The amount awarded is also reasonable. On the other hand the appellant should be contended with the fact that the respondent's salary is being deducted directly. Although the court varied the earlier order by reducing the total monthly sum by KShs.500/=:, I do find that there is no need to disturb the ruling by the trial court.

In the end, I do find that both the appeal and the cross appeal lacks merit and the same are dismissed with no orders as to costs. The ruling of the court attaching the respondent's salary shall remain in force.

Delivered, dated and signed at Kakamega this 23rd day of October 2013

SAID J. CHITEMBWE

J U D G E