



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

DIVORCE CAUSE NO.85 OF 2002

S.R.L.....PETITIONER

VERSUS

R.S.L.....RESPONDENT

RULING

The application before me was made by the respondent pursuant to the provisions of **Sections 7(1), 22 and 86** of the **Children Act** and **Sections 1A and 3A** of the **Civil Procedure Act** seeking orders of the court to the effect that the petitioner be compelled to provide her portion of the school fees for the child K.L and to meet all the arrears of her unpaid portion of the school fees. In the alternative the respondent prayed that the court orders that the said child be immediately transferred to an alternative school where the father (the respondent) is capable of paying the school fees. The grounds in support of the application are stated on the face of application. It is further supported by the annexed affidavit of the respondent. The application is opposed. The petitioner swore a lengthy replying affidavit in opposition to the application.

At the hearing of the application, I heard oral rival submissions made by Mr. Mungu for the respondent and by Miss Machio for the petitioner. I have carefully considered the said submissions including the pleadings filed by the parties herein in support of their respective opposing positions. The dispute between the petitioner and the respondent relate to the education of their child, K.L. The respondent complains that the petitioner has taken the child to an expensive school whose fees he cannot afford. He therefore requests that the court either orders the petitioner to shoulder part of the school fees or in the alternative make an order that the child be transferred to a school that the respondent can afford. On her part, the petitioner is of the view that the best interest of the child should be of paramount consideration. In that regard, it is her case that since the child had settled in the school that he is currently schooling, it would not be in the best interest of the child for the child to be taken to another school. It is the petitioner's submission that since she was divorced from the respondent, the respondent has been reluctant to provide for the education of the child unlike the period before their separation. The petitioner is of the view that the respondent has the financial capacity to pay the school fees of the child at his

current school. On his part, the respondent pleaded that taking into consideration that he also has to provide for his other children, it would strain him financially if he was forced to pay the school fees demanded by the school where the child is currently attending.

In making any decision concerning the welfare of the child, this court is required to put into consideration the best interest of the child. In the present application, it is apparent that because of the differences between the petitioner and the respondent, the education of the child has been negatively affected. The child was expelled from a school where he had been taken to by the respondent due to disciplinary issues. The petitioner enrolled the child in the current school without consulting the respondent. From the moment the child was enrolled in his current school, the respondent has complained that he cannot afford to pay the fees demanded by the school for the education of the child. Negotiations between the petitioner and the respondent in regard to how the school fees is to be paid appears to have hit a brick wall. At one point during the negotiations, the petitioner offered to pay 15% of the fees. This is despite the fact that in her affidavit the petitioner states that she is not engaged in any form of stable employment. Neither the petitioner nor the respondent is willing to disclose to the court their monthly incomes. This court has therefore been left in the dark in regard to the petitioner's and the respondent's said monthly income.

What is clear is that since the child was transferred to the school that he is currently attending, the child appears to have stabilized both emotionally and in his education. However, it is apparent that the respondent cannot afford to pay the fees demanded by the school. How can this problem be resolved? The petitioner and the respondent can either sit down and amicably agree on the school that the child should be taken that can be afforded by the respondent, or alternatively the parties herein agree to share the payment of the school fees. In regard to the first option, I hereby direct that the petitioner and the respondent agree on an affordable school that the child can be taken to. That agreement should be reached within seven (7) days of today's date. If the parties are unable to agree on an affordable school that the child shall be taken, then the petitioner shall shoulder 25% of the fees that is required to be paid in the current school, while the respondent shall be responsible for 75% of the fees. This apportionment of the school fees shall also apply to the school fees arrears that accumulated since the petitioner made the decision to enroll the child to the current school without consulting the respondent.

Either party shall be at liberty to apply. There shall be no orders as to costs.

DATED AT NAIROBI THIS 21ST DAY OF JANUARY, 2011

L. KIMARU

JUDGE