

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
CIVIL APPEAL 135 OF 2007

S.K.M.....APPELLANT

VERSUS

M.C (SUING THROUGH E.J.....RESPONDENT

JUDGMENT

The memorandum of Appeal raises two grounds of appeal thus:-

1. THAT learned trial magistrate erred in law and fact in ordering the attachment of more than 45% of the Appellant's income in violation of section 101 of the Children's Act.
2. The learned trial magistrate erred in law and fact in failing to award custody of the minor to the Appellant.

At the hearing of the Appeal counsel for the Appellant abandoned the second ground of appeal.

This appeal arises out of a judgment that ordered the Defendant father of the minor herein to pay school fees for the minor and to pay rent of Kshs.2500/= for minor's food. And the mother of the minor was ordered to meet the minor's expenses as to clothing and to pay for water and electricity expenses.

The Appellant adduced evidence that his salary was Kshs.6000/= a month and a once off monthly allowance of Kshs.4, 500/=. He said he was a police officer. He did not produce his pay slip in support of his monthly earnings. He now states that the sum of Kshs.4, 500/= is excessive and it is more than 45% of his income. I find as a fact that no pay slip was produced at the hearing to prove the Appellant's salary and the trial court merely took the Appellant's word for it. The Appellant did not deny paternity of the minor and in fact sought his custody which the court declined and which the Appellant did not pursue on this appeal. The trial court apportioned financial responsibility over the minor between its parents. I note that no one was given responsibility for the minor's medical attention whenever that need may arise. The mother has custody and it would be of necessity to follow that whenever the minor would require medical attention she would have to meet the same in addition to meeting the costs for electricity and water. The Appellant has the responsibility of providing for his minor child and it was him who did not provide full particulars of his income by way of documentary evidence so as to enable me decide whether or not the trial court ordered him to pay an amount bigger than the law would allow. No material regarding attachment of salary was provided and I come to the conclusion that this appeal is totally devoid of merit and I accordingly dismiss it.

DATED SIGNED AND DELIVERED AT ELDORET THIS 7TH DAY OF JULY 2010.

P.M.MWILU

JUDGE

IN THE PRESENCE OF

Manani - Advocate for Appellant

N/A - Advocate for Defendant

Andrew Omwenga - Court Clerk.

P.M.MWILU

JUDGE