



REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI MILIMANI LAW COURT  
MISCELLANEOUS APPLICATION 81 OF 2004

**G W G ..... GUARDIAN**

**AND**

**J M M:.....RESPONDENT**

**RULING**

This is an application by way of Notice of Motion dated 19<sup>th</sup> May,2004 under the provisions of section 5 of the Judicature Act and Order 52 of the Rules of the Supreme court of England. It seeks the following orders:-

- (a) That Mr.J M M be committed to civil jail for six months or such other or further period of punishment as this Honourable court shall deem fit for contempt of court.
- (b) The Respondent pay cost of this application.

The genesis of this application is that on 17<sup>th</sup> November,2003, the Applicant and the Respondent the mother and Father of the Minor in this suit respectively, recorded a consent before the Senior Resident Magistrate, in the children's court at Eldoret in Children's case No.44 of 2003 the basis upon which the said court gave and subsequently issued the following orders:-

“By consent of the parties herein the suit be compromised as follows:-

1. That the defendant do pay all school fees at Ranges View Academy in Nyahururu town.
2. The defendant do pay the shopping, books and medical expenses in respect of the minor as and when they arise.
3. That both parents do have custody of the minor as follows:-
4. (a) The father do have custody for the first week of every holiday and the mother do have custody of the remainder.
5. That each party bear its own costs incurred so far.”

The Applicant claims that the Respondent has subsequently refused to comply with the orders. She says that the Respondent has refused and neglected or failed to pay school fees and outstanding dental bills. The particulars of the school fees and dental bills have been shown to the court. The Respondent in opposition to the Application made and filed a Replying Affidavit sworn on 31<sup>st</sup> May,2004. In the said

affidavit, the Respondent depones that he has been paying the minor's school fees and will pay any outstanding fees to be paid as and when the same is demanded. He produced a copy of a bank deposit of Shs.6000/= which he made into the minor's school bank account on 6<sup>th</sup> May,2004. However, this court notes that the demand for the minor's school fees dated 7<sup>th</sup> May 2004 was Kshs.18,364/=. He does not explain or state when he paid the balance or intends to. He claims that there are no outstanding medical bills and that the minor is of good health and could not have been purportedly treated as alleged. The Respondent in effect implies that the doctor's bill and diagnosis are falsified. He claims that the application is made with the intention to frustrate and vex him.

The Respondent did not attend court during the hearing of the applicant. This court is satisfied that he was duly served with the hearing notice through his counsel on record but chose not to attend court. Be that as it may, this court has considered his Replying Affidavit and its contents on merit and deems that both parties have been heard. Considering the gravity of the orders sought, justice demands that the Replying Affidavit be taken into account fully irrespective of his non-attendance.

Upon consideration of the application and the Replying Affidavit, I am satisfied and find that the Respondent has not paid school fees and medical bills as ordered by the court. He has not produced any sufficient evidence that he has and is paying the minor's school fees and medical bills as he had undertaken to do and as ordered by the court. To the contrary, he rubbishes the evidence of the bills payable and the diagnosis of the doctor. He says that there is no provision in the order for reimbursement of the expenses incurred by the Applicant.

The Respondent denies he was ever served with the court order and the import has never been explained to him. On the other hand he sets out in detail the legal advice given to him by his advocate Mr. D.K. Magare.

I have carefully considered all matters and issues before me. I find the statements of the Respondent quite unconvincing. He has not paid school fees and medical expenses as ordered. He denies being in contempt in court, yet he arrogantly questions the right of the mother to check with the school whether he has paid school fees. He even suggests that it is an equal duty of the Applicant to pay medical fees. To me, this is indicative of his disobedience of the court order. His conduct is intentional and willful. It amounts to contempt of the court order and this court.

This court shall not allow its orders to be disobeyed and its dignity to be lowered in the eyes of any party in proceedings and the public. It is this court's duty to prevent this and punish the Respondent whom I find is guilty of the offence of contempt of court. As a result, I do hereby order that a warrant of arrest do issue against the Respondent. He is to be arrested by any Bailiff of the High Court of Kenya to whom the warrant of arrest is forwarded to for execution in any part of the Republic of Kenya and the Respondent is to be brought before this court to show cause why he should not be committed to civil jail for contempt of court. The Police are hereby requested to provide all necessary assistance to the court's bailiff in the execution of the warrant of arrest and this order I also order that henceforth the title of these proceedings should only contain the initials of the minor's first name, "E" and not his full names to protect him and considering that strictly he is not a party in the suit. Orders accordingly.

Dated and Delivered at Eldoret on this 14<sup>th</sup> day of March,2006.

**MOHAMMED K. IBRAHIM**

**JUDGE**