



REPUBLIC OF KENYA



**AKN v NWN (Family Appeal E010 of 2023)
[2025] KEHC 6379 (KLR) (6 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 6379 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
FAMILY APPEAL E010 OF 2023
DO CHEPKWONY, J
FEBRUARY 6, 2025**

BETWEEN

AKN APPELLANT

AND

NWN RESPONDENT

RULING

1. What is before this Court for determination is the Notice of Motion application dated 22nd November, 2023 under Certificate of Urgency in which the Applicant seeks the following orders:-
 - a. Spent.
 - b. Spent.
 - c. That the orders issued by Hon. M. Kinyanjui, (SPM) Kiambu CM Children Case No.25 of 2023 (*Naomi Wanjiku Ngombi v Amos Kibiro Njoroge*) on 30th October, 2023 be stayed pending the hearing and determination of the appeal herein.
 - d. That the Honourable Court do revise the maintenance payable with respect to the minors in the interim period pending the hearing and determination of the main appeal herein.
2. The Application is based on the grounds as set out on its face and the Supporting Affidavit of Amos Kihiro Njoroge, the Applicant herein, sworn on 22nd November, 2023. According to the Applicant, he was sued *vide* a Children Case at the trial court for maintenance of his four minor children by the Respondent herein. That the Trial court in a Ruling delivered on 30th October, 2023, the trial court made the following orders:
 - a. Until further orders of the court, the Respondent shall bear the responsibility for school fees and school related expenses for the minor children.



- b. The Defendant shall pay Kshs. 20,000= per month to assist the Plaintiff with costs of food and clothing for the minor children. This payment shall be in addition to the equal sharing of related expenses.
 - c. Each party shall continue to maintain an insurance cover for the minor children separately.
 - d. Each party shall bear their own costs.
3. The Applicant was aggrieved with the orders in this Ruling and he filed the present Appeal alongside the present application. It is the Applicant's contention that he is unemployed and being a driver by profession, relied on occasional assignments by different vehicle owners to take visitors to various destinations to earn a living and hence will not be able to make the payments ordered by the court. He also depones that in the contrary, it is the Respondent that has a monthly salary of Kshs. 40,000= but has not been given any responsibility to pay school fees other than maintaining the children in her house.
4. Further, it is the Applicant's contention that he is likely to face contempt proceedings for default of the interim arrangements on payments as ordered by the trial court as he is not able to raise the amounts ordered as the same are an arduous responsibility that he is struggling to keep up with. He blames the Respondent for moving out from a house where she was not paying rent and which has led to the escalation of maintenance costs for the children. He holds that he is willing to take the two older children and leave the twins to the Respondent or is even willing to take all of them and feed for them in a most cost effective way. He holds that his motive is not to avoid maintaining the minors but to be given alternative orders on the same as the present ones appear to be one sided and invites the court to note that he has not been granted access to the minors. He has attached a copy of parental responsibility they had voluntarily committed to at the Children's Department to confirm his claim of bad faith on the part of the Respondent.
5. The Respondent opposed the Application through her Replying Affidavit sworn on 5th December, 2023, wherein she has averred that she lives with all the four children and meets all the household expenses including rent, food, electricity and water bills, clothing, diapers, house help and weekly shopping without the Applicant's contribution and thus disputes the claim by the Applicant that she does not have any responsibilities. According to her, the Applicant is only paying Kshs. 25,300= for the two children, which is on a basis of 3 months while the bulk of the responsibilities are on her.
6. The Respondent has tabulated the monthly costs of the running the house and maintaining the children which amounts to about Kshs. 80,000=. She holds that the issue of custody was not determined by the trial court and thus the Applicant cannot raise it before this court. She contends that the Applicant should maintain his biological children as he owns a Motor Vehicle Registration Number KCR 395H, Honda Fit which he uses for car hiretaxi business and that he occasionally gets contracts from Ocean Stretch Company for a sum of Kshs. 2,000= per day. It is her argument that the Applicant has not satisfied the conditions of Order 42 Rule 1 and 6 of the *Civil Procedure Rules*.
7. The court directed and the Application was canvassed by way of written submissions whereby the Applicant filed his submissions dated 13th December, 2023 while the Respondent's submissions are dated 15th December, 2023.

Determination.

8. I have read through the application dated 22nd November, 2023, the Supporting Affidavit thereto, the Replying Affidavit and written submissions filed by either party. I find the issue for determination being:-



- a. Whether the orders issued by Hon. M. Kinyanjui (SPM) in Kiambu CM Children’s Case no.25 of 2023, Naomi Wanjiku Ngombi –vs- Amos Kihiro Njoroge can be stayed pending the hearing and determination of the appeal filed herein.
 - b. Whether the court can revise the order of maintenance payable with respect to the minors in the interim period pending hearing and determination of the appeal herein.
9. The application has been brought under the provisions of Section 119(b) and (c) of the [Children’s Act](#) No.29 of 2022 which provides:-
- [119]. “In relation to an order made under Section 116, the Court may—
- (b) vary, modify or discharge any order made under Section 116 with respect to making of any financial provision, by altering the schedule of payments or by increasing or diminishing the amount payable; or
 - (c) temporarily suspend ,the order as to the whole or any part of the money paid and subsequently revive it wholly or in part as the Court deems fit.”
10. It is trite that in all children matters, the paramount principle a court should consider is ‘the best interest of a child’ in line with Article 53(2) of the *Constitution* of Kenya and enunciated in the case of [K.W.M. –vs- R.N.](#) [2015]eKLR. Article 53(2) of the *Constitution* of Kenya provides that:-
- “A child’s best interests are of paramount importance in every matter concerning the child”.
11. With record to the issue of stay of proceedings, it is this Court’s view that given that the Applicant is seeking stay of proceedings of the trial court, it is trite that courts ought to be slow in staying proceedings with regard to orders of maintenance of children, as it will be detrimental to the welfare of the children as the expenses keep accruing by the day.
12. This court associates itself with the decision in [Z.M.O –vs- E.I.M.](#) [2013] eKLR, Musyoka J. stated:-
- “As a matter of principle, grant of stay of execution of maintenance orders in children’s cases should be made in very rare cases. I say so because parents have a statutory and mandatory duty to provide for the upkeep of their minor children. There are no two ways about. Suspension of a maintenance order is not in the best interests of the child, particularly in cases such as this one, where paternity is not in dispute. To my mind, once a maintenance order is made where parentage is undisputed it should not be suspended pending appeal, where the appeal is on the quantum payable.”
13. On the issue of revision of the order of maintenance of children, the court is of the view that there being one of the issues subject of determination on appeal, it would not be proper to address the same on revision as sought. The prayer is therefore found inappropriate and thus declines.
14. The upshot is that this court finds that the Notice of Motion application herein lacks merits and is therefore dismissed with costs to the Respondent. Subsequently, the following directions issue:-
- a. The parties to proceed with the hearing of the appeal.
 - b. The Appellant to file and serve a Record of Appeal within thirty (30) days from the date herein.
 - c. Mention on for parties to confirm compliance of directions issued and take further directions.

It is so ordered.



**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 6TH DAY OF
FEBRUARY...., 2025.**

D. O. CHEPKWONY

JUDGE

