



REPUBLIC OF KENYA



**BL v RD (Civil Appeal E057 of 2023)  
[2025] KEHC 3659 (KLR) (Family) (21 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3659 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
CIVIL APPEAL E057 OF 2023  
PM NYAUNDI, J  
MARCH 21, 2025**

**BETWEEN**

**BL ..... APPELLANT**

**AND**

**RD ..... RESPONDENT**

*(Being an appeal from the Judgment of Hon C.C.Oluoch (Mrs), Chief Magistrate  
at Nairobi Children’s Case No. E179 of 2021 delivered on 26th May 2023)*

**JUDGMENT**

1. Before this court for determination is the Appeal filed by Brenda Limo (the Appellant) through a Memorandum of Appeal dated 23<sup>rd</sup> June 2023. The Appeal arises out of a Judgment delivered on 26<sup>th</sup> May 2023 by Hon. C.C Oluoch (MRS) , Chief Magistrate in Nairobi Children’s Case No.E179 of 2021.
2. The Appeal was canvassed by way of written submissions. The Appellant filed the written submissions dated 30<sup>th</sup> September 2024. The Respondent’s submissions are dated 13<sup>th</sup> November 2024.

**Background**

3. The Appellant herein filed a suit (as Plaintiff) in the Children’s Court in Nairobi being Suit No. E179 of 2021 seeking the following orders against the Respondent;
  - a. The Parental Responsibility Agreement dated 31<sup>st</sup> January 2019 be adopted as an order of this Honourable Court.



- b. A declaration that the acts of the Defendant of failing to provide for the minor amounts to breach of the Parental Responsibility Agreement dated 31<sup>st</sup> January 2019 and are against the best interest of the minor.
  - c. An order compelling the Defendant to specifically perform his part of the obligations a per the parental responsibility agreement datd 31<sup>st</sup> January 2019.
  - d. An order compelling the Defendant to fully settle to the Plaintiff any arrears owing under the Parental Responsibility Agreement from the date of signing the agreement to the date of judgment.
  - e. Costs of this suit.
  - f. Any other relief that this Honourable Court may deem just and fit to grant.
4. The Appellant and the Respondent were in a relationship and separated after some time. They were blessed with a child CR born on 17<sup>th</sup> May 2017.
  5. The parties entered into a Parental Responsibility Agreement dated 31<sup>st</sup> January 2019. It is contended that the Respondent is said to have failed to honour the terms of the agreement which prompted the Appellant to file an application dated 12<sup>th</sup> February 2021 seeking orders that the Respondent be ordered to pay school fees for the minor and that the court do make an interim order that the parental responsibility agreement be performed according to its terms.
  6. The Parental Responsibility Agreement was adopted as an order of the court on 12<sup>th</sup> February 2021 pending interparties hearing.
  7. The matter went for full hearing and delivered a judgment on 26<sup>th</sup> May 2023. The orders that were extracted from the impugned lower court's judgment read:
    1. That the both parents shall have joint legal custody of the minor.
    2. That the Plaintiff shall have actual custody, care and control of the minor.
    3. That the Defendant is at liberty to arrange for access to the minor through the advocates on record or directly.
    4. That the Defendant shall cater for the medical needs of the minor through a suitable comprehensive medical cover.
    5. That the Defendant shall pay school fees and cater for all educational needs of the minor at the current school or any other to be agreed by the parties.
    6. That the Defendant shall pay a sum of Kshs. 30,000/= by the 5<sup>th</sup> of every month for upkeep of the minor.
    7. That the Plaintiff shall cater for all other needs of the minor.
    8. That each party shall bear its own costs.
  8. Dissatisfied with the Judgment of 26<sup>th</sup> May 2023, the Appellant(Plaintiff) filed a Memorandum of Appeal dated 23<sup>rd</sup> June 2023 in which she listed eleven (11) grounds of appeal as follows:
    1. That the Learned Trial Magistrate erred in law and fact by failing to put the best interests of the minor first.



2. That the Learned Trial Magistrate erred in failing to honour the mutual agreement made between the parties thereto.
3. That the Learned Trial Magistrate erred in failing to consider the monthly expenses incurred by the Appellant on the welfare of the minor.
4. That the Learned Trial Magistrate erred in failing to consider the pleadings of the parties in her ruling.
5. The Learned Trial Magistrate erred in failing to award the arrears accrued from November as had been pleaded by the Appellant.
6. The Learned Trial Magistrate misdirected herself in failing to consider the evidence presented by the Appellant in varying the payment terms.
7. The Learned Magistrate erred in upsetting the custodial agreement in the Parental Responsibility Agreement despite the same not being in siue and none of the parties applying to vary it.
8. That the Learned Trial Magistrate erred in disregarding time and effort taken by the parties to amicably assent to a Parental Responsibility Agreement which she totally disregarded in her ruling.
9. That the Learned Trial Magistrate erred in fact and in law by reducing the Appellant's contribution to the upkeep of the minor by 70%.
10. That the Learned Trial Magistrate erred in fact in finding that the Respondent paid 100% of fees while he in fact paid only 70% of the fees while the Appellant paid 30 % of fees.
11. That the Learned Trial Magistrate erred in finding that Kshs. 30,000/- contribution by the Respondent would be sufficient against the weight of evidence that monthly expenses without fees are close to Kshs. 200,000/-.

### **Appellant's Submissions.**

9. The Appellant submitted that the order that the Respondent is at liberty to access the minor and pay Kshs. 30,000/- monthly for upkeep is not in the best interest of the minor as per Section 8 of the Childrens Act and Article 53 (2) of *the Constitution*. Relying on the decision of Hassan Zubeidi vs Patrick Mwangangi and another [2014] eKLR, she submitted that the Parental Responsibility Agreement was binding on both parties and that the court did not have the discretion to alter the terms. She further submitted that the trial court ignored the schedule of expenses despite the same not being challenged.
10. The Appellant submitted that the trial court ignored the pleadings and reliefs filed by the Appellant and opted to vary the terms of the parental responsibility agreement which according to her, is prejudicial. It was submitted that the court failed to award arrears to the Appellant despite her informing and making submissions in court that the Respondent was in arrears of Kshs. 595,000/- as at April 2023.
11. Further, that the parental responsibility agreement on custody was favourable for both parties. That varying the agreement gives the Respondent a lee way to avoid seeing the minor. The Appellant submits that the Respondent voluntarily signed the Parental Responsibility Agreement. Varying the same was unjustifiable and the same should be set aside. Lastly, she submitted that Kshs. 30,000/- monthly upkeep is unreasonable given the change in the economy of the country.



### **Respondent's Submissions.**

12. Relying on the decision of JOO vs AJM[2017]eKLR, the Respondent submitted that no parent should unfairly gain from the other parent by using the best interest of the minor.
13. The Respondent in submitting that parental responsibility is equal and relied on the decision of CIN vs JNN [2014] eKLR and JMW vs CKK [2021] eKLR. In this case, he argued that his contribution in the the Parental Responsibility Agreement was excessive. The Appellant was only paying 30% of the school fees and nothing more. Lastly, he submitted that the trial court held that the arrears accrued could not be ascertained because the Respondent at some point paid 100% of the school fees. He urged the court to dismiss the appeal with costs to the Respondent.

### **Analysis And Determination.**

14. Having considered the pleadings herein and submissions filed and authorities cited and the relevant law, I frame the following as the issues for determination;
  1. Whether the trial court erred in revoking the Parental Responsibility Agreement
  2. Who should pay the costs of the Suit
15. The Appellant submits that the Parental Responsibility Agreement is in the best interest of the child. The Respondent on the other hand argues that the agreement was not fair because the Appellant only paid 30 % of the school fees while he was to pay 70 % of the school fees. All other responsibilities fell on him. According to him, the amount he was required to pay was excessive.
16. I wish to point out that the Parental Responsibility Agreement dated 31<sup>st</sup> January 2019 was adopted as an interim order. The said interim order was to remain in force pending hearing and determination of the main suit.
17. It is trite that in every decision undertaken concerning a child, the best interest of a child should be taken into account. This position is clearly captured in the UN Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. The same has also been captured under Article 53 (2) of *the Constitution* of Kenya as follows: 'a child's best interests are of paramount importance in every matter concerning the child'.
18. From the onset, it follows that what matters to this court is the best interest of the minors and the same was well pronounced in the case of MAA v ABS [2018] eKLR, where it was held as follows:-

.... While considering this matter, this Court is alert to the welfare of the children herein who are of tender years. The matter is not about the applicant/appellant and the respondent; and their interests are secondary to those of the child. The foregoing provisions require this Court to treat the interests of the child as the first and paramount consideration and must do everything to inter alia safeguard, conserve and promote the rights and welfare of the child herein. Acting in the best interest of the children in question.



19. Parental responsibility refers to the joint responsibility of the parents to a child and no parent shall be treated specially as having a superior right over the child than the other. See Section 32(1) of the *Children Act*. In *P.K.M v A.N.M* [2020] eKLR Aroni J stated that;
- in my view therefore one need not go further to look at what parents need to do for a child and to what extent. In this instance the parties have joint responsibility towards their son and no one is superior to the other...
20. Section 31 of the Children’s Act defines parental responsibility to mean all the duties, rights, powers, responsibilities and authority which by law a parent of a child has in relation to the child and the child’s property in a manner consistent with the evolving capacities of the child.
21. The duties referred to above include, but are not limited to-
- a. the duty to maintain the child and, in particular, to provide the child with-
    - i. basic nutrition;
    - ii. shelter;
    - iii. water and sanitation facilities;
    - iv. clothing;
    - v. medical care, including immunization;vi.basic education; and
    - vi. general guidance, social conduct and moral values
  - b. the duty to protect the child from neglect, abuse, discrimination or other differential treatment;
  - c. the duty to-
    - i. provide parental guidance in religious, moral, social, cultural and other values that are not harmful to the child;
    - ii. determine the name of the child;
    - iii. procure registration of the birth of his or her child;
    - iv. appoint a legal guardian in respect of the child;
    - v. receive, recover and otherwise deal with the property of the child for the benefit, and in the best interests, of the child;
    - vi. facilitate or restrict the migration of the child from or within Kenya;
    - vii. upon the death of the child, to arrange for the burial, cremation of the child or any other acceptable method of interment; and
  - d. the duty to ensure that, during the temporary absence of the parent or guardian, the child shall be committed to the care of a fit person
- (3) .....
- (4) A person who does not have parental responsibility over a particular child, but has care and control over the child, may, subject to the provisions of this Act, do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child’s welfare.



22. The Appellant in the trial court argued that the Kshs. 100,000/= paid by the Respondent was insufficient. She tabled the minor's need as follows;
- a. House rent- Kshs. 60,000
  - b. Clothing- Kshs. 20,000(including school wear)
  - c. Food- Kshs. 40,000
  - d. Water/Electricity bills- Kshs. 8000
  - e. DSTV/Internet- Kshs. 10,350
  - f. Child wellness and grooming –Kshs. 9,000
  - g. House help's salary- Kshs. 18,500
  - h. Entertainment (toys and weekend outings) –Kshs. 22,000
  - i. School related expenses other than school fees- Kshs. 6500
- Total- Kshs. 194,350.
23. The trial court in its judgment noted that some of the items listed by the Appellant are not basic needs. The court also noted that the Respondent paid 100% of the school fees. The Respondent did not have an issue paying the minor's school fees and a monthly maintenance of Kshs. 20,000 . The court held that adopting the parental responsibility agreement is bound to overburden the Respondent.
24. Section 33 of the *Children Act*, provides that Parental responsibility Agreements can be executed by parents of a child who are not married to each other. The Appellant and the Respondent entered into such an agreement. Both of them executed the agreement in the presence of Counsel.
25. By Plaint dated 12<sup>th</sup> February 2021 and Amended on 16<sup>th</sup> December 2022 the Appellant moved the Court to adopt the parental responsibility agreement. She alleged that the Respondent was in breach of the Parental Responsibility Agreement to the detriment of the the best interests of the Child.
26. The Respondent filed statement of Defence dated 24<sup>th</sup> February 2021 and denied that he was in breach of the agreement countering that it was the plaintiff that was uncooperative.
27. At trial the Respondent stated that he was under pressure when he signed the agreement and he was of the view that he was taking on a larger responsibility than the Appellant.
28. The Court in its judgment framed the following as the issues for determination;
1. Whether the Court should adopt the parental responsibility agreement as an order of the Court
  2. Whether the defendant has breached the agreement and should pay accumulated arrears.
29. In arriving at her decision the Court observed as follows;
- The theme that runs through the provision of *the Constitution*, *Children Act* and case law is that parental responsibility should as nearly as possible be shared equally by both parties. When sharing out parental responsibilities a court must have regard to the needs of a minor vis -a - vis the means of the parents. Even when parties have executed a parental responsibility agreement and presented it to court for enforcement, a court cannot disregard the laid down principles and adopt it without interrogation of its terms.



30. The court then proceeded to analyse the the quantification of the minors needs as particularised in the affidavit sworn on 18<sup>th</sup> November 2022. She considered that the estimates were on the higher side. She was of the view that the proposal by the Respondent to pay school fees in full and a monthly sum of Kshs 20000 was reasonable and proceeded to vary the terms of the maintenance accordingly.
31. The issue for determination is whether the Trial Magistrate erred in arriving at this conclusion. I have read the judgment and find that the Court in arriving at its decision did not consider the best interests of the Child. The Court reflected on parental responsibility but did not appear to give as much bandwidth to the consideration of the question of whether the parties were seeking a revocation of the parental agreement and secondly whether a basis had been laid for the Court to vary the parental responsibility agreement.
32. Like any other contract the principles that would guide a court in revoking it are well established. The Respondent did not discharge this responsibility. In fact at the trial neither of the parties sought a revocation of the parental responsibility agreement. It was only in submissions that the Respondent stated that the agreement was one sided and therefore should not be adopted.
33. I find therefore that if the Court had considered the best interests of the Child, it would have arrived at a different outcome. The best interests of the child would protect the child from bearing the brunt of the fall out between the parents, as evidenced by the reduction in maintenance payable by the Respondent.
34. On account of the foregoing, I will allow the Appeal and substitute the orders of the Trial Court and direct that the Parental Responsibility Agreement is adopted as the order of the Court.
35. Each party will bear their own costs.

**SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 21ST DAY OF MARCH, 2025.**

**P M NYAUNDI**

**JUDGE**

In the presence of:

Eredi for Appellatant

Maureen Ng'ang'a for Respondent

Kanja Court Assistant

