



**JCW v LWK (Family Appeal E105 of 2023)
[2025] KEHC 3370 (KLR) (Family) (20 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3370 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

FAMILY APPEAL E105 OF 2023

HK CHEMITEI, J

MARCH 20, 2025

BETWEEN

JCW APPLICANT

AND

LWK RESPONDENT

RULING

1. On 11th July 2024 this court delivered a structured ruling in which in view of the application dated 5th October 2023 the applicant had sought orders among others that the respondent be compelled to pay a monthly sum of Kshs 75,000 towards the maintenance of the children pending the hearing of the said application as well as the appeal.
2. The court was not in a position to give a proper ruling without determining the current financial positions of the two parties and that is why it directed that affidavit of means be prepared by both of them. They have both complied.
3. In his affidavit dated 29th August 2024 the applicant deponed that his monthly rental income which is the source of his income is Kshs 360,000 and this is when all the premises are occupied. He went ahead and tabulated the entire monthly bill which included the children’s school fees and the related expenses.
4. On the other hand, the respondent in her affidavit of means dated 23rd October 2024 deponed that she works at Ridgeways Baptist church earning a monthly income of Kshs 175,062 and she has exhibited her pay slip.
5. She deponed further that the applicant and herself were joint directors of [particulars withheld] Company Limited which has substantial income generating sources, namely rental premises totaling



- Kshs 1,300,000 per month. She deponed however that the applicant has kicked her out of the said company and she no longer has any control and it was only the applicant that was managing the same.
6. The respondent attached accounts of the said company of the period between January 2021 and August 2022 in which it made a net income of Kshs 11,912,175
 7. She deponed that she was forced to take out some loan facility so as to bail out the son who had been thrown out of the house while in Britain as well as pay for his flight ticket.
 8. She also deponed that she was staying in a rented house while the applicant was staying in the matrimonial home.
 9. In his rejoinder the applicant filed a replying affidavit sworn on 6th November 2024 in which he denied the allegations that the respondent was no longer a director of [particulars withheld] Company Limited. He evidenced this by the fact that she withdrew the sum of Kshs 950,000 on 5th October 2022.
 10. That there were two suits, namely, at the Commercial Court Case No E345 OF 2024 and Matrimonial Suit No E078 OF 2021. Both suits are between the parties and are yet to be resolved.

Analysis and Determination

11. The court has perused the above affidavit of means and it appears to me that the respondent's earning is from her salary at Ridgeways Baptist church. There is no other income under her own name.
12. At the same time the applicant's income of kshs360,000 is derived from the rental premises. There is no other source directly benefiting the applicant.
13. There is however the [particulars withheld] Company Limited which has some substantial investment and income. The respondent contents that she was kicked out of the said company and it was the applicant who now runs the show. She however did not disprove the fact that she withdrew the sum of Kshs 950000 on 5th October 2022. I presume that by then she could have been a director.
14. Needless to state however that the issue of the said company I think is now before the commercial court. I shall refrain from commenting on it. Nevertheless, I find that that is where the bulk of the parties' investments and sources of income comes from especially looking at the accounts presented by the respondent.
15. Although the applicant argued that the attachments relating to the company and in particular the accounts came too late in the day and the same had been expunged at the lower court, the same is so material before this court. I state so for the reason that if indeed it is their company, then the proceeds flowing therefrom should mitigate the orders of the lower court. In essence that is the income which ought to benefit the parties and specifically the children.
16. It is therefore clear in my view that the parties want the court to turn a blind eye on the income from the company and concentrate on whatever other sources they have exhibited.
17. In view of the above observations, I find that the claim by the applicant for the court to order the respondent to pay a sum of Kshs 75000 pending the appeal will not be possible for the fact that her income from her salary of kshs175000 is too little in the circumstances. There is also the loan of which she took to meet the costs of the minor while he had been kicked out of the residence in UK.
18. Pending the determination of the appeal the best approach for the applicant is to deal with the proceeds from the company which will mitigate or ameliorate the decree of the trial court. Nothing stops the



parties from withdrawing income generated from the company to sort out the issues pertaining to their children.

19. Whether they are both directors or not is not for this court to decide unless invited to. I doubt whether this court has the jurisdiction to entertain the same except perhaps on a very limited sense.
20. I have stated so much to show that the application dated 5th October 2023 must fail. The same is hereby dismissed with no order as to costs.

DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 20TH DAY OF MARCH 2025.

H K CHEMITEI

JUDGE

