



REPUBLIC OF KENYA



JMK v EW (Civil Appeal 319 of 2023) [2025] KEHC 2993 (KLR) (13 March 2025) (Directions)

Neutral citation: [2025] KEHC 2993 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL APPEAL 319 OF 2023
FN MUCHEMI, J
MARCH 13, 2025**

BETWEEN

JMK APPELLANT

AND

EW RESPONDENT

DIRECTIONS

Directions On Release Of Securty

1. The genesis of his matter was the filing of this appeal against the judgment of Principal Magistrate in Ruiru Children's case No. E.063 of 2022 where the court ordered the appellant, the father of the minors to pay Ksh.125,000/- a month towards the children's school fees to the respondent. The respondent, the mother herein was to cater for food, clothing, entertainment, grooming and other miscellaneous expenses for the children.
2. The appellant was to provide medical cover for the children in addition to his other responsibilities. The respondent was granted physical/actual custody of the children and the appellant given limited access on alternate Saturdays during school holidays.
3. The applicant was dissatisfied with the judgment and filed this appeal together with an interlocutory application dated `23/3/2023 for stay of execution pending appeal. The applicant was granted interim orders of stay ordered to deposit in court Ksh.220,000/=. Thereafter, the application for stay was compromised following compliance by the applicant in depositing security.
4. The appeal was fully heard and determined by Judge Hellene Namisi. In her judgment delivered on 26th September, 2024, the court partly allowed the appeal by setting aside the orders made against the appellant to vacate the family's house at Ruiru or Syokimau. The order restraining the applicant from visiting the respondent and the children without the respondent's consent was also set aside. The order for payment of Kshs.125,000/- per month to cater for other needs of the children as well as the



respondent's sustenance (school fees aside) was set aside. The other orders in the judgment were upheld by the appeal court.

5. Upon the determination of the appeal, the counsel for the appellant Mr. Ndichu for Mburu Machua told the court that he had lost touch in his client and had no authority to authorize release of the security of Kshs.220,000/- to the respondent. The counsel sought for time to look for his client to give him a go ahead for release of the funds.
6. Ms Muhanda for the respondent argued that the deposit should be released to the respondent since the appeal had been concluded. She further told the court that the appellant had not been paying school fees for the children as ordered by the magistrate court and that the security funds should be released to the children's school directly or to the respondent's a firm of advocates.
7. Mr. Wainaina argued in response that the funds deposited was not decretal amount and should not be released as proposed by the counsel for the respondent.
8. I have perused the record of the court and in particular, the directions of the court made on 03.05.2023 when interim orders for stay were granted by Mshila J. in Kiambu HCA No. E029 of 2023 which was later transferred to Thika for disposal following gazettelement of a High Court in Thika. In directing deposit of the funds in question, the court did not refer to the amount as "decretal" amount. However, the funds were to stand in as a guarantee or security for cots of the appeal.
9. The applicant at that time had been ordered by the lower court to be making monthly sums to the respondent and to pay school fees for the children which was to commence immediately after the judgment. The appellant has defaulted in payment of the school fees during the pendency of the appeal, a fact that has not been denied.
10. In my considered view, the amount deposited is under the authority of the court in regard to release. In ordinary civil cases, such deposit is released to the respondent as security for costs or for settlement of the decretal amount upon conclusion of the appeal. In this mater, the intention of the court when it ordered deposit of the money must have been to cover the costs of the appeal or other incidental costs.
11. The appeal herein was partly successful. It was not denied that the appellant has not been paying school fees. For this reason, it would be in order for the funds to be released to the respondent to cover the outstanding school fees of the children. After all, the funds will reduce the figure owed by the appellant for school fees which he is legally liable to pay, now or in the future.
12. Consequently, I hereby order that the funds of Kshs.220,000/- be released to the respondent's counsel for payment of the children's school fees and other related costs.
13. It is hereby ordered.

DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 13TH DAY OF MARCH 2025.

F. MUCHEMI

JUDGE

