



**In re SNA (Minor) (Civil Appeal 42 of 2014)
[2025] KEHC 4595 (KLR) (Family) (8 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 4595 (KLR)

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

FAMILY

CIVIL APPEAL 42 OF 2014

HK CHEMITEI, J

APRIL 8, 2025

IN THE MATTER OF SNA (MINOR)

BETWEEN

MAS APPELLANT

AND

ALM RESPONDENT

JUDGMENT

1. Before this court are two matters for determination. The first is the main appeal herein and the second is the notice of motion by the Respondent dated 12th March 2024.
2. The motion seeks orders among others that:-
 - (a) The court varies the ruling dated 22nd July 2014
 - (b) The court directs that a fifty - fifty (50%-50%) maintenance by both parents.
 - (c) An order that Respondent pays an amount of Kshs. 275000 being arrears.
3. When the matter came before this court, I directed that submissions be filed for both the appeal and the application. The Appellant filed both submissions whereas the Respondent filed submissions in respect to the application only despite asking for more time.
4. I have looked at the two matters and I am of the considered opinion that taking into consideration the period this matter has taken the best way is to deal with the main appeal. For some reasons best known to the parties this matter has been in this corridor of justice for unnecessarily long time.



5. The results of the appeal will definitely impact on the application which is of course interim in the circumstances.
6. The memorandum of appeal has four grounds to wit; whether the trial court directed itself in allowing the notice to show cause while an application for review was pending; whether the notice to show cause was taken without any decree being extracted; whether there was non-disclosure of material facts by the Respondent and whether the trial court considered irrelevant issues.
7. The Appellant therefore prayed that the notice to show cause dated 20th May 2014 and the application for review dated 17th July 2013 be heard but by a different judicial officer and that there be stay of maintenance orders dated 25th June 2013 pending the application for review.
8. The submissions by the Appellant has dwelt majorly on the question of the absence of the extracted decree before the notice to show cause was issued and that the court failed to appreciate the same when it made the impugned ruling.
9. I have perused the ruling of the court and in particular the paragraph stating that:-

“As it is there are valid orders of the court which despite a decree not being extracted are in full knowledge of the defendant as it is the very order he seeks to review and or set aside.”
10. The court admitted that there was no decree which was extracted. If that is the case what was the basis of the notice to show cause? What was served upon the Appellant?
11. The significance of a decree cannot be gainsaid especially in regard to execution.
12. Section 2 of the [Civil Procedure Act](#) defines the same as hereunder:-

“decree” means the formal expression of an adjudication which, so far as regards the court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final; it includes the striking out of a plaint and the determination of any question within section 34 or section 91, but does not include—
13. On the other hand, Order 22 Rules 18 - 20 which gives effect to execution of decrees is worth citing. The same states as follows:-
14. Rule 18 state in part

“Where an application for execution is made—

 - (a) more than one year after the date of the decree;
 - (b) against the legal representative of a party to the decree; or
 - (c) for attachment of salary or allowance of any person under rule 43, the court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him:”



15. Rule 19 states that:-

“(1) Where the person to whom notice is issued under rule 18 does not appear or does not show cause to the satisfaction of the court why the decree should not be executed, the court shall order the decree to be executed.

(2) Where such person offers any objection to the execution of the decree, the Court shall consider such objection and make such order as it thinks fit.”

16. Order 22, rule 20 states:-

“(1) When the preliminary measures (if any) required by the foregoing rules have been taken, the court shall, unless there is cause to the contrary, issue its process for the execution of the decree.”

17. The subtotal of the above quotations is to the effect that in the absence of the decree there is no proper execution that can pass the law. It is the evidence of the ruling or the judgement and I think that is the reason why the Act takes it seriously.

18. All that the Respondent needed to have done is to extract it and effect service upon the Appellant. Knowing it as the court intimated is simply not the law. I think the Appellant was aware of the proceedings and that was the reason it applied for the matter to be reviewed so that he could explain himself.

19. On this legal basis alone, I find the appeal meritorious. It's a legal principle which must be observed during such execution exercises and cannot be wished away.

20. The court is conscious of the matter being a children's issue and I find it as the more reason why the law ought to be observed.

21. Nothing is lost for the Respondent since she still has a chance at the trial court to affect any orders, as long as they are properly obtained. As a matter of fact, the issues raised in the application dated 12th March 2024 ought to be raised at the trial court. Nothing stops the said court from making further orders whether enhancing the contribution by the parties towards the maintenance of the minor.

22. For now, I wish not to dwell in the merits or otherwise of the suit at the lower court. What was before me was basically an appeal based on some interim ruling. I reckon that the parties will exhaust the main suit which of course will give them an opportunity to demonstrate to the court their respective capacity to maintain their child.

23. In the premises the appeal is allowed as hereunder:-

(a) The ruling dated 3rd July 2014 as well as the notice to show cause dated 20th May 2014 are hereby set aside.

(b) The application dated 17th July 2013 be fixed for hearing before the lower court and to be handled by another judicial officer other than Hon. Gichana.

(c) Pending the determination of the above review application there be stay of execution.

(d) Each party to meet its respective costs.

DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 8TH DAY OF APRIL, 2025.



H K CHEMITEI
JUDGE

