



**SNN v AKG (Family Appeal E002 of 2025) [2025] KEHC 5005 (KLR) (25 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5005 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
FAMILY APPEAL E002 OF 2025  
FN MUCHEMI, J  
APRIL 25, 2025**

**BETWEEN**

**SNN ..... APPLICANT**

**AND**

**AKG ..... RESPONDENT**

**RULING**

1. The application for determination is dated 17<sup>th</sup> February 2025 seeking for orders that the Magistrates Court in Ruiru lacks jurisdiction to hear an determine the matter as there is a similar suit at Milimani Law courts being Children’s Case No. E270 of 2025 which has jurisdiction to hear the matter for the reason that the minors stay and reside in Nairobi.
2. In opposition to the application, the respondent filed a Replying Affidavit dated 24<sup>th</sup> February 2025.

**Appellant’s/Applicant’s Case.**

3. The applicant states that she and the respondent cohabited together as husband and wife and were later blessed with three minors GG, 14 years, GN 11 years and GM 7 years.
4. The applicant avers that their marriage was good until the respondent became vulgar, abusive and violent issuing threats to cause great harm to both her and the minors. The respondent’s behavior became so intense and he was adamant to any pleas from her forcing her and the two minors to move out.
5. The applicant avers that after she left their matrimonial home with the two minors, she filed Children’s Case No. EXXX of 2025 whereby the court has directed that a children’s officer report be filed in court. The matter was scheduled for mention on 24<sup>th</sup> February 2025. After service of the pleadings to the respondent, he filed Children’s Case Number E021 of 2025 at the Ruiru Magistrate Court and was issued with the instant impugned ex parte orders that are a result of the instant appeal. The applicant further states that the honourable court was moved through a certificate of urgency application dated



11<sup>th</sup> February 2025 by the respondent issued ex parte orders that are detrimental to the minors life and wellbeing. Following the impugned orders, the applicant states that the court directed that the police officers do enforce the orders and she is at risk of being arrested which has traumatized and extremely stressed her in respect of the well being of the children.

6. The applicant avers that she filed a certificate of urgency application dated 12<sup>th</sup> February 2025 seeking for orders of stay or review of its orders and status quo be maintained but the orders sought were not granted. The applicant argues that the minors are at a risk of being taken by the respondent whereby they will suffer immensely both physically and emotionally. The applicant further states that the minors are currently attending school at [name withheld] Primary & Junior School and the ex parte orders will jeopardize their education. The applicant argues that if the orders sought are not granted, the minors will be at risk of mental and emotional abuse and their wellbeing and statutory rights will be at risk of being endangered.

### **The Respondent's Case**

7. The respondent states he and the applicant have been married for 15 years under Customary Law until 16<sup>th</sup> November 2019 when they solemnized the same at St Peters Catholic Church Kwihota.
8. The respondent avers that around the month of December 2024, the applicant deserted her matrimonial home and left the minors under his custody. The respondent avers that he thereafter took the responsibility of taking care of all the responsibilities of the children. Further, the respondent states that he and the applicant agreed that he remains with the children and they had an arrangement where the applicant got visitation and access to the minors over the weekends while trying to solve their matrimonial differences.
9. The respondent states that on 1<sup>st</sup> February 2025, the applicant took GNK and GMK from school where they were attending tuition leaving behind GGK who refused to go with her. Furthermore, one of the children feel ill prompting the applicant to take the child to hospital and was to return them both back on Monday so that they do not miss school but she did not do so.
10. The respondent states that on 11<sup>th</sup> February 2025 he filed a suit in Ruiru Children Case No. E021 of 2025 where the trial court granted the orders sought which are the subject of the appeal herein. On the same day about an hour later, the applicant filed her suit in Milimani Children Case No. EXX of 2025 seeking similar orders. Thus the respondent argues that it is not true that he filed the suit after they served him.
11. The respondent states that during the period the applicant had deserted their matrimonial home, he took actual custody of the children and was single handedly raising up the children, accommodating them and catering for all their needs at their residence at Kamakis Estate Ruiru within the jurisdiction of Ruiru Law Courts. Further, GNK is in grade 6 and a candidate currently missing out in her academics while GMK is in grade 2 and a good ballet dancer and she is missing her dance practices as well as excellent early education at their school Depaul Austin Junior Academy which is within the jurisdiction of Ruiru Law Courts. The respondent further avers that the applicant works for gain at Kenyatta University Teaching Referral and Research Hospital which is at Kamae within the jurisdiction of Ruiru Law Courts.
12. The respondent states that the applicant moved the two minors to Nairobi Academy after he filed his suit and she knowingly wanted to take them away from the jurisdiction of the court.
13. The respondent further states that in utter disrespect of the orders issued on 12<sup>th</sup> February 2025 in Ruiru Children's Case No. E0XX of 2025, the applicant illegally and unlawfully removed the NEMIS



registration of GNK from Depaul [name withheld] Academy to [name withheld] Primary School in total violation of the orders of the court and without his knowledge and consent.

14. The respondent avers that the applicant has previously proven that she can abscond on her parental responsibilities including but not limited to the emotional and physical care of the children as well as any other care that the children would require from their parent. The respondent further states that the applicant is unable to give the children a reasonable upbringing by virtue of being in an unstable environment.
15. The respondent states that if the children are left with the applicant and actual and physical custody of the children was handed over to her, the whereabouts of the children would be unknown to anyone but herself since she has no known residence and thus the minors would be put in very inhumane conditions.
16. The respondent states that since the applicant is unable to pay her own rent or cater for her housing for the minors, he prays that the court grant him legal and actual custody of the minors.
17. Parties disposed of the application by way of written submissions.

### **The Applicant's Submissions**

18. The applicant submits that the proceedings in the magistrate's court at Ruiru ought to be stayed as the issues for determination are before another court namely Milimani Children's Case No. EXX of 2025. The applicant refers to Section 6 of the *Civil Procedure Act* and the cases of *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] KLR 1 and *Kenya National Commission of Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 Others* [2020] eKLR and submits that the matter is sub judice and thus the court in Ruiru lacks jurisdiction to determine the matter.
19. The applicant submits that when she left the matrimonial home with the two minors, she immediately filed the case at Milimani Law Courts, Children's Case No. E270 of 2025 and immediately after service of the pleadings, the respondent proceeded to file Children's Case No. E021 of 2025 at Ruiru magistrates court where he was issued with the instant impugned ex parte orders.
20. The applicant further submits that the case in Milimani Law Courts has already taken major steps towards the conclusion as the court has already directed that the children officer's report be filed which has been complied with. A psychiatrist report has been filed therein as well. Thus it is in the best interests of the children that the matter at Ruiru be stayed as the matter in Milimani Law Courts can be concluded expeditiously.
21. The applicant submits that she stays in Nairobi with the two minors of tender age whereby they are attending Nairobi Primary & Junior School while the respondent is currently renting a house at Ruiru.
22. The applicant relies on Article 47 and 50 of *the Constitution* and the cases of *Kiai Mbaki & 2 Others v Gichuhi Macharia & Another* [2005] eKLR; *Martha Wangari Karua v The Independent Electoral and Boundaries Commission & Others Nyeri Civil Appeal No. 1 of 2017* and *Wachira Karani v Bildad Wachira* [2016] eKLR and submits that the court in Ruiru issued conclusive ex parte orders to her detriment without giving her a chance to be heard and thus violating her constitutional right. The applicant argues that if the ex parte orders are allowed to stand, she is at a risk of getting arrested and the well being of the minors is at risk. Further, the applicant argues that the minors are at risk of being taken by the respondent and they stand to suffer immensely both physically and mentally under his care.



## The Respondent's Submissions

23. The respondent reiterates what he deponed in his affidavit and submits that the Magistrates Court in Ruiru had jurisdiction at the time of filing the suit as all the minors were at the jurisdiction of the court at the time of institution of both suits.
24. The respondent relies on Section 8 and 102 of the *Children Act* and Article 53(2) of *the Constitution* and submits that courts have the discretion to issue ex parte orders in custody matters when immediate intervention is necessary to safeguard the welfare of the child. Relying on the case of *J.O v S.A.O* [2016] eKLR, the respondent submits that the court in Ruiru granted ex parte orders aligning with the best interests of the children.
25. The respondent refers to the case of *Mbogo v Shab* [1968] EA 93 and submits that an appellate court should only interfere with interim or ex parte orders where there is clear evidence of misdirection or abuse of discretion by the lower court. The respondent argues that the applicant has not demonstrated how the exercise of discretion was not judicious and has failed to demonstrate that his custody is prejudicial to the children's wellbeing. On the contrary, the applicant's continued interference with his access to the minors creates instability and is contrary to their developmental needs.
26. The respondent submits that the applicant's failure to disclose material facts pertaining the parallel suit in Milimani Court reflects a deliberate attempt to mislead the honourable court. The applicant failed and has misdirected the court as to the timeline of events and attempts to abuse the court process to impede justice. The respondent submits that the suit initiated by himself at Ruiru Law Courts was filed at around 3 pm whereas the applicant filed hers at 4pm on 11<sup>th</sup> February 2025. The respondent further submits that the suit in Milimani has been stayed pending the hearing of his notice of preliminary objection dated 24<sup>th</sup> February 2025 on account of jurisdiction there being a suit filed at Ruiru Law Courts and orders issued.
27. The respondent relies on the case of *Muchanga Investments Ltd v Safaris Unlimited (Africa) Ltd & 3 Others* [2009] eKLR and submits that the omission of the material facts by the applicant is a clear abuse of the court process.
28. The respondent argues that despite the Ruiru court's issuance of orders in his favour, the applicant has willfully refused to comply thereby denying him access to the minors. Such conduct undermines the best interests of the children and flouts the administration of justice. The respondent further relies on the case of *Teachers Service Commission v Kenya National Union of Teachers & 2 Others* [2013] eKLR and submits that the applicant's refusal to comply with the orders issued by the Ruiru court undermines the principle of the rule of law.

## The Law

### Whether the court has jurisdiction to entertain the application.

29. The law on the question of jurisdiction was enunciated in the case of *Owners of the Motor Vessel "Lilian S" v Caltex Kenya Limited* [1989] KLR 1 where the court held:-

Jurisdiction is everything. Without it a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.



30. The applicant in the instant application argues that the magistrate's court in Ruiru does not have the jurisdiction to determine the children case as there is in place another suit in Milimani being MCCHCC/E270/2025. I have perused the record and noted that the respondent filed a suit in Ruiru Magistrate's Court being MCCHCC/E021/2025 on 11<sup>th</sup> February 2025 at 15.56.11. The applicant filed her claim on 11<sup>th</sup> February 2025 at 16.30.11.
31. It is evident that the question of jurisdiction of the Ruiru or Milimani Children's Court ought to have been filed before either of the courts for determination. The respondent said he has already filed preliminary objection (P.O.) at Milimani Court on grounds that the Milimani Court has no jurisdiction to hear the case. The case at Ruiru and the one at Milimani were both filed on 11<sup>th</sup> February 2025 with a difference in time of 34 minutes. This means that none of the parties had served the other one during the hour of filing. After this application was filed, the respondent filed a P.O. at Milimani Court. The impugned orders in Ruiru MCC HCC No. E021 of 2025 were issued on 12<sup>th</sup> February 2025.
32. It is noted that the orders sought in this application on 17<sup>th</sup> February 2025 ought to have been sought through applications before any of the relevant Magistrates Courts. The applicant ought to have applied for transfer of the case at Ruiru to go to Milimani so that the two cases can be consolidated and decided by one court. The orders issued at Ruiru court aggrieved the applicant in that she was not given an opportunity to be heard. This court considered the negative impact of the orders stayed them on interim basis. The said orders were interim in nature and were far reaching in that the court directed the police to get involved in enforcing the interim orders. The involvement of the police was out of character with family and children's issues and were likely to traumatize the children well as adversely affect the applicant. No matter the urgency of the application, the applicant deserved to be heard before such far reaching orders were given.
33. In my considered view, the parties herein ought to be heard in one of the courts where they filed their cases so that all the issues are determined together. The two courts have jurisdiction to hear children matters. The issue of subjudice raised herein cannot effectively be established because the two cases were filed simultaneously within one hour. It is also noted that the two cases are at their initial stages.
34. In the interest of justice and in the best interest of the children, this court will exercise its supervisory powers under Article 165 of *the Constitution* and grant orders it deems proper in the circumstances. I have considered the submissions and pleadings of both parties and I hereby direct as follows: -
- a. That the interim orders issued in Ruiru MCC HCC E021 of 2025 are hereby vacated.
  - b. That Ruiru MCC HCC E021 of 2025 is hereby transferred to Milimani Law Courts for purposes of consolidation with Milimani Law Court MCC HCC No E270 of 2025 and subsequent disposal.
  - c. That each party will meet their own costs of this application.
35. It is hereby so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 25<sup>TH</sup> DAY OF APRIL 2025.**

**F. MUCHEMI  
JUDGE**

