



REPUBLIC OF KENYA



**JTNR v EWM (Civil Appeal E013 of 2025)
[2025] KEHC 5716 (KLR) (Family) (9 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5716 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
CIVIL APPEAL E013 OF 2025**

PM NYAUNDI, J

MAY 9, 2025

IN THE MATTER OF THE CHILDREN'S COURT CASE NO. MISC E272 OF 2024

BETWEEN

JTNR APPELLANT

AND

EWM RESPONDENT

*(Being an Appeal from the ruling of the Hon. J Kibosia PM issued on
30th December 2024 in Nairobi Children's Case No. Misc E272 of 2024)*

RULING

1. The Appellant herein is aggrieved by ruling of the trial court delivered on 30th December 2024, directing that he pay the tuition for the child in respect of whom parental responsibility has been extended. The respondent on her part was directed to pay the school related expenses.
2. He contends that the payment of fees on his own is onerous as the Hon. Magistrate failed to consider his income in arriving at the decision and also is manifestly unfair as the responsibility for providing for the child is not shared equally as the respondent will only cater for school related expenses and these are low as the child will be commuting from home.
3. After the child enrolled at the University, the appellant paid for the 1st semester but failed to pay for the 2nd semester. His stance was that the university was too expensive and therefore not sustainable if he was expected to pay the fees solely.
4. He contends that the choice of University was in consultation with the respondent and on the understanding that the parents would share the fees. Further he states that as parents, they have also shared the responsibility equally and he expected that it would be the same for the university tuition.



5. The respondent on the other hand argues that the appellant unilaterally arrived at the decision to take the child to the particular university and she is only in a position to provide the school related expenses. The documentation on record shows that he was actively participating in the enrolment of the child at the University and had himself recorded as the parent who would pay the fees for the child.
6. The Court directed that the matter proceed by way of written submissions and both parties have complied. The Appellant challenges the ruling for failing to take into account his earnings. Reference is made to the decision in RAS & RDS [2019] eKLR . This was reiterated in the decision of JKM *v* JKM (Civil Appeal 8 of 2019) [2023] KEHC 18341 (KLR). A party cannot be compelled to provide beyond his means.
7. It is his submission that if as parents they cannot afford the fees they should be able to take the child to a different university within their means. The respondent has rebuffed his suggestions that the matter be resolved by mediation.
8. He submits that if the respondent is not willing to contribute to the tuition, then he should be allowed to identify a university that he can afford for the child to continue her education. He relies on the decision in P. B. v J. N [2013] eKLR.
9. In her submissions, the respondent indicates that the Court in making the orders complained did so in exercise of its discretion and the grounds upon which an appellate court can interfere with the exercise of discretion are limited as set out in the celebrated decision of Mbogo v Shaa (1968) EA 93 .
10. She further submits that the Court is not bound to distribute the responsibility for the child equally (that is with mathematical precision) but rather exercise equity, as the non financial contribution of the other parent along with other considerations are to be factored in. In this regard, reference is made to the decision in G.O. & 2others (Suing thru, their mother and next friend) E. M.M. v M.O.O [2016] KEHC (KLR) and the Supreme Court decision in MAK v RMAA & 4 Others (Petition 2(E003) of 2022)[2023] KESC 21 (KLR) (2 March 2023) (Judgment)
11. Having made the decision to take the child to Strathmore he should pay the fees. She submits that ordering her to contribute towards the fees would be punishing her and relies on the decision in S.K.W.v M.W.I (2015) eKLR for assertion that maintenance orders should never punish or oppress any party. Finally she submits that transferring the child from the current university would not be in her interests.

Analysis and Determination

12. Having considered the pleadings herein, the submissions filed and the applicable law, I find that the issue for consideration is whether it would be in the best interests of the child to vary the orders of the trial court so as to (a) direct that the respondent contribute to the university fees of the child or (b) that the Child be enrolled at another university.
13. Best interests of a child is not a cliché or a fine play on words, it is the very essence of a child's rights and an articulation of the acknowledgment that the commitment to children and their welfare with the promulgation of the Consitution of Kenya 2010 and enactment of the *Children Act*, 2022 was transformed from mere rhetoric to tangible benefits for children, especially with regard to actualisation of parental and societal obligations towards children. It is therefore not a term to be bandied about. Once a party contends that it is in the child's best interest for an action to be taken, they must give content and context to that averment.



14. When the Court sits to adjudicate over a children matter, it does through the lens of the child's best interest which is to say the child's welfare. The Court asks itself how does this decision advance the child's actual enjoyment of the right in question.
15. The question for this Court in determining this appeal, is what is the best interest of the child herein. I find the answer to that is that the Child should be guaranteed access to a university education that will be uninterrupted, and will equip her with the skills to enter the job market with requisite skills.
16. The context is, that her mother states, and we will respect that, her daughter should continue at the current university and the father should solely pay the fees, while she pays the school related expenses. The father on the other hand states he is prepared to support the child's university education but on condition that they share the current fees at the current university, or another university is identified whose fees he can pay on his own.
17. Strathmore university is one of the leading universities in the Country, it is ranked 68th in Africa. I am sure many parents who want the best for their children would want their children enrolled there. There is one catch. A student at Strathmore has to pay tuition, otherwise the decision whether or not the child will learn at Strathmore University is made not by this Court but by the University.
18. It is in the best interests of the child to attend university without the ever constant risk that she may be excluded on account of non payment of fees. The Appellant herein says he can't afford it, his circumstances are such that he has other pressing financial commitments. Children's rights do not mean that the Child will be raised in a bubble oblivious to the circumstances of the parents. The mother is adamant that she is unable to contribute towards the fees. She more than the Appellant should readily appreciate the limitations that financial ability may place on a parent on what they can or cannot do for a child.
19. In my mind I find that this is an appropriate matter to interfere with the exercise of the discretion of the trial court. I find that if the Court had considered the proposal that the child be enrolled at a different university within the means of the parent paying the fees, she would have arrived at a different decision.
20. Accordingly , I find the appeal has merit, allow it and make the following orders-
 1. The Appellant in consultation with the Child will identify a university within 30 days, within his means whereat the child will undertake the same course.
 2. The Appellant will pay the tuition fees for the minor, the respondent will meet the school related expenses.
 3. Money deposited with the respondent Counsel be released to the Appellant
 4. The Appellant will clear any outstanding liabilities at Strathmore University as the date of this ruling
 5. Each party will bear the own costs.
 6. The matter referred back to the trial court for a priority hearing date.

It is so ordered

SIGNED, DATED AND DELIVERED VIRTUALLY IN NAIROBI ON 9TH DAY OF MAY, 2025.

P M NYAUNDI

HIGH COURT JUDGE



In the presence of:

Mundia holding brief for Sam Njeru for Appellant

Ms. Naazi holding brief for Kighi for Respondent

Fardosa Court Assistant

