



**POO v LKM (Suing as Mother and Next Friend) (Family Appeal E008 of 2024) [2025] KEHC 5661 (KLR) (8 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 5661 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
FAMILY APPEAL E008 OF 2024  
FN MUCHEMI, J  
MAY 8, 2025**

**BETWEEN**

**POO ..... APPELLANT**

**AND**

**LKM ..... RESPONDENT**

**SUING AS MOTHER AND NEXT FRIEND**

*(Being an Appeal from the Judgment of Hon. I. F. Koome (SRM) delivered on 21st March 2024 in Children’s Case No. E147 of 2023)*

**JUDGMENT**

**Brief facts**

1. This appeal arises from the judgment of Thika Senior Resident Magistrate in CM Children’s Case No. E147 of 2023 in which the trial court granted joint legal custody of the minor to both parents, the appellant and respondent respectively. The respondent was given physical/actual custody of the minor while the appellant was granted limited access to the minor subject to modalities agreed upon by the parties, failure to which the court would later give directions. The court further directed that the minor shall not travel out of the country without the consent of the appellant which consent shall not be unreasonably withheld with the court directing that it must sanction such intention to travel out of the country. The court further directed that the respondent caters for the house rent and bills for utilities such as electricity and water for the minor, Kshs. 7,500/- per month for food and shopping for the minor and costs of the minor’s enrolment to a new school including payment of second term fees. The appellant on the other hand was to cater for the minor’s school fees and school related expenses from third term 2024, Kshs. 7,500/- per month for food and shopping for the minor and the minor’s medical cover through Social Health Insurance Fund (SHIF) or in the alternative through a private



comprehensive medical cover. The trial court directed that the minor to be transferred from Carta Oakhill School to ACK Thika Memorial Church School with effect from the second term of 2024.

2. Dissatisfied with the court's decision, the appellant lodged this appeal citing 11 grounds summarized as follows:-
  - a. The learned trial magistrate erred in law and in fact by granting the respondent physical/actual custody of the minor despite existence of exceptional or special circumstances that militate against the grant of such orders to the respondent.
  - b. The learned trial magistrate erred in law and in fact by failing to adopt the principles of proportionality and equal distribution of parental responsibility to the parties thereby giving the respondent a superior right/claim over the minor as against the appellant and condemning the appellant to bear the lion share of the minor's maintenance.
  - c. The learned trial magistrate erred in law and in fact by prioritizing the convenience of the respondent in terms of living arrangements as opposed to the minor's best interests in terms of educational needs and scholarship opportunities, upbringing, social development, academic progress, stability, security and well being when he ordered that the minor be transferred from his current school, Carta Oakhill School to ACK Thika Memorial Church School.
  - d. The learned trial magistrate erred in law and in fact by failing to consider the report by the children's officer in determining the minor's welfare, living arrangements and educational needs. The children's officer's assessment was a vital piece of evidence that should have informed the court's decision on custody, maintenance and educational needs of the minor.
3. Parties put in written submissions.

### **Appellant's Submissions**

4. The appellant submits that following the consent between the parties dated 20<sup>th</sup> June 2024 the only contentious issues are the order granting the respondent full physical/actual custody, care and control of the minor and for the transfer of the minor from Carta Oakhill School to ACK Thika Memorial Church School which the appellant argues ought to be set aside in the best interests of the minor.
5. The appellant submits that the respondent got married to a foreigner in the United Kingdom and in October 2023, the respondent whilst visiting her husband in United Kingdom had to leave the minor under the care of the respondent's unemployed young sister who was not capable of giving the minor general welfare and security. The appellant argues that he is available and committed as the minor's father to live with the minor as he is always present in the country unlike the respondent.
6. The appellant argues that the respondent ought to have informed him of her relocation plans to the UK and make proper arrangements for the minor for his well being. The appellant further argues that the respondent moved the minor from Kwa Heri area to Witethie area for her own reasons and benefit but not for the minor's welfare. The appellant submits that in moving to Witethie, the respondent left a fully paid for house and the minor's school fees for the whole year. Thus the respondent cannot be heard to complain that the previous school where the minor was schooling was far and that the logistics of getting the minor to school were high.
7. The appellant relies on the cases of J.O vs S.A.O [2016] eKLR and S.M.M vs A.N.K [2021] eKLR and submits that he should be granted the actual/physical custody taking into account the existing circumstances of the respondent's frequent visits and stay to the United Kingdom with a possibility of permanently relocating to the UK thus leaving the minor under the care of third parties without him



- having access to the minor. The appellant argues that the said circumstances are exceptional requiring him to be granted actual/physical custody as he is ever present, ready and capable of staying with the minor.
8. The appellant submits that the trial court erred in law and in fact by failing to adopt the principles of proportionality and equal distribution of parental responsibility to the parties thereby giving the respondent a superior right/claim over the minor as against him and condemning him to bear the lion's share of the minor's maintenance.
  9. The appellant relies on Article 53 of *the Constitution* and Section 90(a) of the *Children Act* and submits that the maintenance of the minor is a responsibility to be shared equally among both parents. As such, the court ought to consider the resources of the parties when making orders for financial provision towards maintenance of the minor. The appellant argues that the respondent is employed under an intermittent contract that is on and off and can be terminated without notice and he is taking care of the minor at the moment by paying school fees and school related expenses and contributing Kshs. 7,500/- per month for food and shopping for the minor. The appellant further argues that the lower court ordered that the minor be transferred from Carta Oakhill School to ACK Thika Memorial Church School without his engagement in the issue. The court further made the transfer orders without any legal or educational justification, yet the order was not among the respondent's prayers in her pleadings.
  10. The appellant argues that at Carta Oakhill School, the minor would be granted a partial scholarship due to the fact that he worked there and further the minor used to enjoy privileges on curricular activities without the parents incurring extra costs thus he paid school fees with no difficulties. The appellant further argues that by transferring the minor to ACK Thika Memorial School, it occasioned a lot of hardships on him as he is forced against his will and capabilities to pay the enhanced school fees and other school expenses.
  11. The appellant relies on the cases of *R.W.M vs P.M.M [2021] eKLR* and *M.O.A vs H.A.O [2021] eKLR* and submits that maintenance orders are made in the best interests of the children and ought not to be oppressive or punitive to any party. The appellant argues that he is overburdened by the lower court orders of transferring the minor to ACK Thika Memorial Church School which is very expensive yet he has been struggling to pay the school fees and school related expenses and contribute Kshs. 7,500/- monthly for food and shopping. The appellant submits that the school fees are currently in arrears and he fears that going forward the burden might be too huge for him to bear which will be detrimental to the minor.
  12. Additionally, the appellant submits that ACK Thika Memorial School is far from where the minor is currently residing with the respondent's younger sister. The minor has to wake up at 5am for pick up by the school bus at around 6.30 am. The appellant further submits that the minor is of tender years and has chest complications which have resulted in him not attending school on several days. The appellant argues that when the minor was attending school at Carta Oakhill School he was in good health and there was no need to wake up early as they lived near the school.
  13. The appellant submits that the respondent's allegations that the appellant was cruel towards her, abusive and constantly threatened to do physical harm towards her and her family members were intended to paint him as a violent person not fit for the well being of the minor. The appellant further submits that the report made to the Witeithie Police Station on 11<sup>th</sup> August 2023 was to blind the court to rule in the respondent's favour as no charges were preferred against him. Furthermore, during an interview with the children officer contained in his report dated 7<sup>th</sup> December 2023, the respondent indicated that he was never violent to her.



### **The Respondent's Submissions.**

14. The respondent relies on the case of Mbogo & Another vs Shah [1968] EA93 and S.L.M vs D.A.M [2018] eKLR and submits that apportionment of parental responsibility in terms of maintenance is at the discretion of the court and an appellate court will not interfere with such discretion unless its exercise is manifestly wrong. The respondent submits that the court properly exercised its discretion in apportioning parental responsibility by strictly adhering to the principle of shared and equal parental responsibility as enshrined in Article 53 of *the Constitution*.
15. The respondent further relies on the cases of E.W.M vs R.K.K [2019] eKLR and M.K vs C.K.K HCA 51/2015 and submits that the court should consider that she is the parent who has the physical and actual custody of the minor and therefore has a non-monetary burden of care that cannot be measured in terms of money.
16. The respondent argues that she has fulfilled her share of parental responsibilities as ordered by the trial court regarding shelter and clothing and she has provided more than the sum of Kshs. 7,500/- of her contribution towards the minor's monthly upkeep.
17. The respondent submits that the appellant has not demonstrated how the trial court erred or exercised its discretion wrongly in apportioning parental responsibility to the parties in the manner that it did. Thus there is no basis for setting aside, varying or in any way interfering with the maintenance orders issued by the trial court.
18. The respondent relies on Article 53(2) of *the Constitution* and Section 8 of the *Children Act 2022* and submits that in determining of any matter where the welfare of a child is concerned, the child's best interest should be of paramount consideration. Further the respondent relies on the cases of K.M.M vs J.I.L [2016] eKLR; Githunguri vs Githunguri [1979] eKLR and H.G.G vs Y.P [2017] eKLR and submits that where the custody of a child of tender years is in issue, such custody should be with the mother of the child unless there are extenuating circumstances. The respondent argues that the appellant has not demonstrated any special circumstances to warrant him custody of the minor. Further, the respondent submits that the appellant's fears that she will relocate to the United Kingdom on a love interest are unfounded and without any basis. The respondent submits that there is nothing wrong with pursuing a private life with anybody as she is an adult capable of making her own decisions.
19. The respondent further submits that the reasons advanced by the appellant are not guided by the best interests of the minor but by the appellant's misplaced and false sense of superiority over her when it comes to the minor and the appellant's inflated ego and hostility towards her. Furthermore, the trial court considered the issue extensively and rendered its final orders with clarity, fairness and finality upon taking all relevant testimony. During cross examination, the appellant seemed acutely aware of the legal requirements for any intended removal of the minor from the territorial jurisdiction of the Republic of Kenya and the protections therein for both parents and minors. The respondent further submits that the trial court in its judgment expressed an order to the effect that the minor shall not travel out of the territorial jurisdiction without the consent of the appellant.
20. The respondent argues that the minor's best interest has at all times been her concern until the appellant put the minor's best interest at risk by taking the minor away from school on 9/10/2023 was completely unwarranted. The trial court further found that it was wrong for the appellant to pick up the minor from school without alerting the appellant and the minor's caregiver at the time being, the minor's aunt.



21. The respondent submits that the children's report dated 7/12/2023 is not binding on the court and that the court has the ultimate discretion to pronounce judgment on issues relating to the minor. The respondent thus implores the court to exercise its inherent powers to uphold the orders of the trial court and not solely rely on the recommendation of the children's officer.
22. The respondent argues that the order directing the minor be transferred from Carta Oakhill School to the ACK Thika Memorial Church School was made in the best interests of the minor. The basis of the order was that the respondent who has actual custody of the minor resides in Witeithe and Carta Oakhill School is far from her residence. The respondent further submits that the trial court could not order her to move closer to Carta Oakhill School due to her legitimate fear for her safety after actual physical violence and threats of further physical violence were made towards her by the appellant.
23. The respondent submits that the enrolment of the minor at ACK Thika Memorial Church School is in the best interest of the minor and was ordered by the trial court upon taking into consideration the minor's well being, growth and development, the good quality of education at ACK Thika Memorial Church School from which the minor stands to benefit and the financial affordability of the school fees and related expenses at ACK Thika Memorial Church School in comparison with that at the minor's former school. The respondent further submits that the trial court rightfully considered the appellant's exhibit which confirms that the school fees at Carta Oakhill School is similar to that in ACK Thika Memorial Church School. Furthermore, the respondent submits that she made all reasonable endeavours to involve the appellant in the process of the transfer of the minor to ACK Thika Memorial Church School but the appellant refused, ignored or neglected to participate. Further as a sign of goodwill and as ordered by the trial court, the respondent states that she catered for expenses for enrolment of the minor at ACK Thika Memorial Church School and 2<sup>nd</sup> term school fees and related expenses. The respondent relies on Section 118 of the Children's Act 2022 and submits that the order of transfer of school was based on justified reasons and in the best interests of the child.
24. The respondent submits that the appellant has refused, neglected and/or ignored to clear the minor's third term school fees balance at ACK Thika Memorial Church School or engage the school accordingly for no justifiable reason other than outright disobedience of the order of the trial court despite the appellant being a person of means and capable of paying the minor's school fees and related expenses.
25. The respondent submits that the minor has integrated well into the new school and is progressing well with his studies until the appellant without cause, flagrantly refused, neglected and/or ignored to clear the minor's third term school fees as a way to inflict emotional and psychological stress to her and disrupt the minor's learning. The respondent further submits that she was left with no choice but to take out a Notice to Show Cause against the appellant to protect the best interests of the minor after the school directed that the minor remains at home and was prevented from sitting his end of year exams on account of the unpaid balance of school fees.

### **Issue for determination**

26. The main issues for determination are:-
  - a. Whether the order granting the respondent physical/actual custody of the minor should be set aside and substitute it with an order granting the appellant physical/actual custody, care and control of the minor.
  - b. Whether the Honourable Court ought to interfere with the maintenance orders issued by the trial court.



- c. Whether the order directing the minor to be transferred from Carta Oakhill School to ACK Thika Memorial School should be set aside.

### **The Law**

27. Being a first Appeal, the court relies on a number of principles as set out in *Selle and Another vs Associated Motor Boat Company Ltd & Others* [1968] 1EA 123:

“.....this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular, this court is not bound necessarily to follow the trial judge’s findings of fact if it appears either that he has clearly failed on some point to take into account of particular circumstances or probabilities materially to estimate the evidence.”

28. In *Gitobu Imanyara & 2 Others vs Attorney General* [2016] eKLR the Court of Appeal stated that:-

An appeal to this court from a trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put, they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect.

29. From the above cases, the appropriate standard of review to be established can be stated in three complementary principles:-

- a. That on first appeal, the Court is under a duty to reconsider and re-evaluate the evidence on record and draw its own conclusions;
- b. That in reconsidering and re-evaluating the evidence, the first appellate court must bear in mind and give due allowance to the fact that the trial court had the advantage of seeing and hearing the witnesses testify before it; and
- c. That it is not open to the first appellate court to review the findings of a trial court simply because it would have reached different results if it were hearing the matter for the first time.

### **Whether the order granting the respondent physical/actual custody of the minor should be set aside and substitute it with an order granting the appellant physical/actual custody, care and control of the minor.**

30. In matters concerning a child, it is a constitutional imperative that of paramount importance is the best interests of the child. To that extent, Article 53(1) of *the Constitution* of Kenya provides that a child’s best interests are of paramount importance in every matter concerning the child. This position has been enshrined in the Children’s Act in section 4 which provides for the welfare of the child. Section 8(1) and (2) of the Children’s Act provides:-

- (2) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
- (3) All judicial and administrative institutions, and all persons acting in the name of these institutions, where they are exercising any powers conferred by this Act shall treat the interests



of the child as the first and paramount consideration...to the extent that this is consistent with adopting a course of action calculated to-

- a. Safeguard and promote the rights and welfare of the child;
  - b. Conserve and promote the welfare of the child;
  - c. Secure for the child such guidance and correction as is necessary for the welfare of the child and in the public interest.
31. From the record, it is evident that the minor is 5 years old. According to the Children's Act, a child of tender years is a child under the age of ten years. It is trite law that when it comes to the question of deciding custody of children of tender years, in the absence of any exceptional circumstances, the custody of children of tender years should be awarded to the mother. In *K.M.M. vs J.I.L* [2016] eKLR the court held:-
- .....a child of tender years' best interest and welfare are where the legal custody is awarded to the mother barring extenuating circumstances that would prevent the mother from providing protection and care of the child. Caselaw lends credence to the proposition that in cases of a child of tender years of less than 10 years as defined under Section 2(1) of the Children's Act 2001, custody is granted to the mother.
32. Similarly in *Githunguri vs Githunguri* [1981] KLR 598, the court stated that:
- The prima facie rule (which is now quite clearly settled) is that other things being equal, children of this tender age should be with their mother, and where a court gives custody of this tender child to the father, it is incumbent on it to make sure that there are really sufficient reasons to exclude the prima facie rule.
33. In *Sospeter Ojaamong vs Lynette Amondi Otieno Civil Appeal 176 of 2006* the court outlined what would constitute exceptional circumstances and held:-
- The general principle of law is that custody of such children should be awarded to the mother unless special and peculiar circumstances exist to disqualify her from being awarded custody....the mother's disgraceful conduct, say her immoral behaviour, drunken habit, bad company are some of the factors which would disqualify her from being awarded custody of a child of tender age.
34. In the instant case, the only reason the appellant has given for him to be awarded full custody is that the respondent intends on marrying someone else and will relocate to the United Kingdom with the minor. The appellant argues that the respondent left for the United Kingdom sometime back and left the minor in the custody of the respondent's sister. On perusal of the record, the appellant has not produced any prove of the respondent's intention to relocate with the minor to the United Kingdom. In any event, the trial court in its judgment directed that the minor was not to travel out of the country without the appellant's consent and in any event, the court must sanction such plans to travel out of the country. Thus it is my considered view that the reasons as adduced by the appellant is not a peculiar or exceptional circumstance.
35. That notwithstanding, the respondent has stated that the appellant is in arrears of maintenance in terms of school fees forcing her to take out a Notice to Show Cause to enforce the court orders. This fact was not denied by the appellant. From the court record, the appellant was not complying with the court's orders on monthly contributions for the maintenance of the minor until parties filed a consent dated 20<sup>th</sup> June 2024. As such, this court is not convinced that since the appellant will comply with the court's orders if given full custody of the minor. It is also not guaranteed that the applicant will give



the minor the best parental care at the time the mother is out of the country. It is not known for how long the respondent will be away since no evidence was adduced to that effect save for allegations of the respondent entering into a marriage with a white man.

36. I am of the considered view that the appellant has not satisfied this court on why should be given physical custody of the minor.

**Whether the Honourable Court ought to interfere with the maintenance orders issued by the trial court by setting aside the order directing the minor be transferred to ACK Thika Memorial Church School.**

37. Parental responsibility has been defined in section 31 and 32 of the Children’s Act and Article 53(1) (e) of *the Constitution* of Kenya which both provide that each parent has a duty to provide the child with the necessities of life.

Section 31 of the Children’s Act provides:-

1. In this Act, “parental responsibility” means all the duties, rights, powers, responsibilities and authority which by law a parent of a child has in relation to the child and the child’s property in a manner consistent with the evolving capacities of the child.
2. The duties referred to in sub section (1) include in particular-
  - a. The duty to maintain the child and in particular to provide him with-
    - i. Adequate diet;
    - ii. Shelter;
    - iii. Clothing;
    - iv. Medical care including immunisation; and
    - v. Education and guidance;
  - b. The duty to protect the child from neglect, discrimination and abuse;
  - c. The right to-
    - i. Give parental guidance in religious, moral, social, cultural and other values;
    - ii. Determine the name of the child;
    - iii. Appoint a guardian in respect of the child;
    - iv. Receive, recover, administer and otherwise deal with the property of the child for the benefit and in the best interests of the child;
    - v. Arrange or restrict the emigration of the child from Kenya;
    - vi. Upon the death of the child, to arrange for the burial or cremation of the child.

38. Section 32:-

1. Subject to the provisions of this Act, the parents of a child shall have parental responsibility over the child on equal basis and neither the father nor the mother of the child shall have a superior right or claim against the other in exercise of such parental responsibility whether or not the child is born within or outside wedlock.



39. Section 114(2) of the Children’s Act stipulates the considerations by which the court shall be guided when making an order for financial provision for maintenance of a child. These considerations include inter alia:

- a. The income or earning capacity, property and other financial resources which the parties or any other person in whose favour the court proposes to make an order, have or are likely to have in the foreseeable future;
- b. The financial needs, obligations, or responsibilities which each party has or is likely to have in the foreseeable future;
- c. The financial needs of the child and the child’s current circumstances;

40. It is important to consider past decisions. In the case of *E.M.M vs M.O.O Naivasha HCA. 53/2015* Meoli J stated:-

It will not do for a party to say that she has an uncertain source of income and therefore the responsibility of maintaining the children should only be borne by the adverse party. The (said) party must establish to the satisfaction of the court that she has also made an effort to provide for the upkeep of the children.”

41. Similarly in the case of *L.A.O vs O.K Arap M. (2019) eKLR* where Justice Thande pronounced herself as follows:-

In the present case, the appellant states that she does not have a job and only assists her father on the farm and in running her late mother’s business. The appellant is paid Kshs. 40,000/= by her father, and receives Kshs. 10,000/= from the respondent each month. She is not exactly destitute. In spite of this, she still seeks that the respondent be saddled with the entire financial responsibility over the child. This negates that constitutional principle that parental responsibility is a shared responsibility. In this regard, I agree with Kimaru J in *C.I.N vs J.N.N [2014]eKLR*, where the court stated that:-

“It will not do for the respondent to say that she has an uncertain source of income and therefore the responsibility of maintaining the children should only be borne by the appellant. The respondent must establish, to the satisfaction of the court, that she has also made effort to provide for the upkeep of the children.”

42. From the above decisions, it is clear that a child is a joint responsibility of both parents. It is expected that each of the parents is obligated by the law to participate in the upkeep of the child in the manner that the court seized of the case may direct.

43. It is also true that though parental responsibility is to be shared, it can never be equal but equitable to avoid overloading one parent as against the other. The court must take into account the financial capability of each parent in granting orders of maintenance. This position was stated in *M.K. vs C.K.K HCA. 51/2015* where the court held:-

“Parental responsibility is shared and not equal based on the financial position of each parent. The mother as the resident parent has a nurturing role to the children and the father to provide maintenance and upkeep of the children.”



44. Equal parental responsibility does not mean equal and similar contribution. In the case of E.M.M vs MO.O. (2016)eKLR Meoli J observed that:-

"However, equal responsibility does not mean equal and similar contribution as the income of each parent, and other non-monetary contribution must be borne in mind."
45. In the case of M.O.A vs H.A.O [2021] eKLR the court held:-

"Although parents may not have equal financial ability for the court to demand equal contribution, one must at least exhibit some sense of seriousness in making some contribution as a sign of good will that he or she is not geared towards overburdening the other parent for the sole purpose of punishing him or her using the best interests of a child principle or as a ground to settle scores out of marital differences."
46. Bearing in mind the foregoing principles, the court notes that the respondent lives with the minor and therefore providing shelter, motherly love and care of her. The court ordered that the appellant take care of medical cover, and school fees and school related expenses and that both parents are to take care of clothing and food expenses.
47. The appellant argues that he is unable to pay school fees at ACK Thika Memorial Church School as it is very expensive and that he could afford the school fees at Carta Oakhill School where the minor was enjoying a scholarship up to 50% of the school fees payable as the appellant worked there. The respondent stated that she transferred the minor to ACK Thika Memorial Church School due to threats directed at her of actual violence by the appellant and persons related to him.
48. On perusal of the record, the appellant testified that he was paying Kshs. 75,000/- as school fees being 50% of the annual fees of Kshs. 150,000/- after discounting the fees through scholarship. I have perused the fees structure at ACK Thika Memorial Church School and the school fees is roughly the same amount if not a lower amount. Furthermore, the respondent stated that the school is nearby and thus the minor reports to school at a normal time. The respondent further stated that the minor has integrated well into the new school and is progressing well with his studies. That notwithstanding, the appellant did not demonstrate that ACK Thika Memorial Church School does not offer reasonable standards of education and discipline.
49. It is my considered view that the respondent has demonstrated that it is in the best interests of the minor to leave the minor at ACK Thika Memorial Church School. That notwithstanding, the record shows that the appellant failed to pay school fees for the minor for the third term forcing the respondent to take out a Notice to show cause before the Magistrate's court. By failing to pay the minor's school fees, the appellant is not upholding the minor's best interests since the minor's studies are interrupted. It is my considered view that the appellant has not satisfied this court that transferring the minor to ACK Thika Memorial Church School has not been in the best interests of the minor. In this regard, the minor shall remain at ACK Thika Memorial Church School unless otherwise directed by a competent court.
50. In conclusion, I find that the appellant has not established any of the grounds of appeal to justify interference by this court with the orders made by the Magistrate on 21<sup>st</sup> March 2024.
51. I find no merit in this appeal and it is hereby dismissed.
52. Each party to meet their own costs.
53. It is hereby so ordered



**JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 8<sup>TH</sup> DAY OF  
MAY 2025.**

**F. MUCHEMI**

**JUDGE**

