



REPUBLIC OF KENYA



SMK v AMM (Appeal E054 of 2022) [2025] KEHC 5872 (KLR) (Family) (9 May 2025) (Judgment)

Neutral citation: [2025] KEHC 5872 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
APPEAL E054 OF 2022
H NAMISI, J
MAY 9, 2025

BETWEEN

SMK APPELLANT

AND

AMM RESPONDENT

(Being an Appeal from the Ruling of Hon. R.O. Mbogo, (Mr.), Resident Magistrate delivered on 27 May 2022 in Nairobi Children Cause No. 234 of 2019)

JUDGMENT

1. The appeal herein challenges the enforceability of interlocutory orders once a judgement has been rendered.
2. In the Children’s Court, the Respondent filed suit seeking orders for maintenance of their child by the Applicant. The Respondent also filed an application seeking interim maintenance orders pending the hearing and determination of the cause. The Application was argued and the Court delivered its Ruling on 8 February 2019 as follows:
 - i. Since the mother has custody of the child, she shall provide clothing and shelter;
 - ii. The Defendant shall provide school fees and school related expenses in the current school or on any school parties may settle on a mutual agreement;
 - iii. The Defendant to take out a cover or NHIF or pay for the medical needs when they arise;
 - iv. Both parties shall meet the costs of food and utilities. The Defendant shall contribute Kshs 20,000/= per month while the Plaintiff shall meet the shortfall;
 - v. Each party at liberty to apply;



- vi. Each party shall bear their own costs
 - vii. The Plaintiff shall set down the matter for hearing within 6 months failure to which interim orders shall lapse
3. The matter was subsequently heard and judgement rendered on 10 June 2021 as follows:
- i. The Plaintiff shall provide shelter and clothing by virtue of her having custody;
 - ii. The Defendant shall provide school fees and related expenses in the current school. the choice of secondary school education shall be mutually agreed and the Defendant shall continue paying the school fees till the child turns the age of majority;
 - iii. That the Defendant shall provide medical cover or NHIF for the child to use in case of sickness;
 - iv. Both parties shall meet the cost of food and other utilities. The Defendant shall contribute Kshs 10,000/= per month while the Plaintiff shall meet the shortfall. The same shall be paid by the 5th of every month beginning July 2021;
 - v. Each party shall bear own costs;
 - vi. Each party is at liberty to apply
4. It would appear that in the period between 8 February 2019 and 10 June 2021, the Appellant herein did not comply with the interim orders thus necessitating the Notice to Show Cause dated 4 October 2021. The Respondent claimed Kshs 343,250/=, being school fees arrears, medical arrears and maintenance for the period stated.
5. In response to the Notice to Show Cause, the Appellant argued that the interim orders which were reinstated by the trial Court on 9 March 2020 were to run until judgement was delivered. The orders lapsed after pronouncement of the judgement.
6. In its Ruling, the trial Court observed that there were no orders in force between 9 August 2019 and 9 March 2020, when the orders were reinstated. However, the orders were in force for the period between 9 March 2020 and 21 June 2021 when judgement was pronounced. The trial court held that it could enforce the orders since the amounts were within the period when the orders were in force. The Order dated 27 May 2022 directed the Appellant to pay Kshs 370,000 within 7 days, failure to which warrants of arrest to issue without further notice and the Appellant to be imprisoned under section 10 of the [Children Act](#) for a period of 10 days till payment in full.
7. The Ruling of 27 May 2022 forms the basis of this appeal, which is on the following grounds:
- i. That the learned Magistrate erred in law when he purported to enforce interlocutory orders after judgement had been pronounced;
 - ii. That the learned Magistrate erred in law when he gave a ruling enforcing orders which has lapsed;
 - iii. That the learned Magistrate erred in law when he applied the law retrospectively;
 - iv. That the Learned Magistrate erred in law and fact when he failed to appreciate that the pronouncement of the judgement brought an end to all previous proceedings and the only orders available for enforcement were the final orders in the judgement
8. The appeal was canvassed by way of submissions.



9. I have keenly read the arguments by both parties contained in their respective submissions. I note that none of the parties has made reference to any relevant sections of the law or authorities to shed some light on or lend credence to their positions.
10. Under Article 53(2) of *The Constitution* and section 8(1) and (2) of the *Children Act*, this Court is commanded that in all actions and cases concerning children the best interests of the children shall be the paramount consideration.
11. Section 121 of the Act provides for enforcement of orders for maintenance or contribution. Section 121 (4)(a) states that where the Court is satisfied that the respondent has wilfully neglected or failed to make payment of any financial provision under a maintenance or contribution order, the Court may order that any arrears in respect of any maintenance monies or contribution monies as the case may be, be paid forthwith in lumpsum or in instalments within such period as the Court may specify.
12. A party cannot wilfully fail or neglect to comply with interim orders in the hope that the final orders will write off the interim obligation. The debt arising from the Appellant's obligation as a parent did not extinguish when judgement was rendered.
13. In the case of *Hadkinson -Vs- Hadkinson (1952) 2 All ER56*, the court held as follows;

“It was the plain and unqualified obligation of every person against or in respect of whom an order was made by a court of competent jurisdiction to obey it unless and until it was discharged and disobedience of such an order would as a general rule result in the person disobeying it being in contempt and punishable by committal or attachment and in an application to the court by him not being entertained until he had purged his contempt.”
14. In *Republic -vs- County Chief Officer, Finance & Economic Planning, Nairobi City County Ex parte Stanley Muturi [2018] eKLR* it was held that “Court orders are not meant for cosmetic purposes. They are serious decisions that are meant to be and ought to be complied with strictly.”
15. The Appellant's argument that the entry of judgement marked the lapse of enforceability of the interim orders holds no water. Even by simply looking at the arrears as a debt owing to the child, through the Respondent, then the liability stands until payment in full.
16. I find no error of law or fact in the trial Court's decision. This appeal is dismissed with costs.

DATED AND DELIVERED AT NAIROBI THIS 9 DAY OF MAY 2025

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

Mr. Mutemi.....for the Appellant

A M.....Respondent

Libertine Achieng..... Court Assistant

