



REPUBLIC OF KENYA



KENYA LAW
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**Thairu v Mwangi (Civil Appeal E100 of 2023)
[2025] KEHC 6572 (KLR) (Family) (15 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6572 (KLR)

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

FAMILY

CIVIL APPEAL E100 OF 2023

PM NYAUNDI, J

MAY 15, 2025

BETWEEN

ROSEMARY MUTHONI THAIRU APPELLANT

AND

LIVINGSTONE MWANGI RESPONDENT

*(Being an appeal from the Judgment of Hon C.C.Oluoch(Mrs), Chief Magistrate
at Nairobi Children's Case No. E364 of 2023 delivered on 25th August 2023)*

JUDGMENT

1. Before this court for determination is the Appeal filed by Rosemary Muthoni Thairu (the Appellant) through a Memorandum of Appeal dated 20th September 2023. The Appeal arises out of a Judgment delivered on 25th August 2023 by Hon. C.C Oluoch (Mrs), Chief Magistrate in Nairobi Children's Case No.E364 of 2023.
2. The Appeal was canvassed by way of written submissions. The Appellant filed the written submissions dated 10th February 2025. The Respondent did not participate in the appeal notwithstanding that he was served.

Background

3. The matter proceeded undefended in the trial Court, the appellant testified as a sole witness at the end of the trial the Court ordered as follows-
 - a. The parent shall have joint legal custody of the minor
 - b. The plaintiff shall have actual custody, care and control of the minor.



- c. The Defendant shall pay school fees and cater for all school related expenses for the minor when he starts school.
 - d. The defendant shall pay a sum of Kshs 10000 every month as contribution for the upkeep of the minor
 - e. The plaintiff shall cater for the other needs of the minor
 - f. Each party shall bear its own costs
4. Dissatisfied with these orders the appellant has lodged this appeal. In her submissions dated 10th February she attacks the Judgment on the following basis-
- a. That the learned magistrate erred in law and in fact in making an award for monthly upkeep and maintenance that was inordinately low.
 - b. The learned magistrate erred in law and in fact in making an award for the plaintiff solely to cater for the minor's medical needs.
5. I have carefully considered the memorandum of appeal, the submissions filed by the appellant, the authorities cited and the relevant law.

Analysis And Determination.

6. In considering this appeal I am well guided that the primary consideration has to be the best interests of the child. It is trite that in every decision undertaken concerning a child, the best interest of a child should be considered. This position is clearly captured in the UN Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. The same has also been captured under Article 53 (2) of *the Constitution* of Kenya as follows: 'a child's best interests are of paramount importance in every matter concerning the child'.
7. The same was well pronounced in the case of *MAA v ABS* [2018] eKLR, where it was held as follows: -
- While considering this matter, this Court is alert to the welfare of the children herein who are of tender years. The matter is not about the applicant/appellant and the respondent; and their interests are secondary to those of the child. The foregoing provisions require this Court to treat the interests of the child as the first and paramount consideration and must do everything to inter alia safeguard, conserve and promote the rights and welfare of the child herein. Acting in the best interest of the children in question.
8. Parental responsibility refers to the joint responsibility of the parents to a child and no parent shall be treated specially as having a superior right over the child than the other. See Section 32(1) of the *Children Act*. In *P.K.M v A.N.M* [2020] eKLR Aroni J stated that;
- in my view therefore one need not go further to look at what parents need to do for a child and to what extent. In this instance the parties have joint responsibility towards their son and no one is superior to the other...
9. Section 31 of the Children's Act defines parental responsibility to mean 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.
10. The duties referred to above include, but are not limited to-



- a. the duty to maintain the child and, in particular, to provide the child with-
 - i. basic nutrition;
 - ii. shelter;
 - iii. water and sanitation facilities;
 - iv. clothing;
 - v. medical care, including immunization;vi.basic education; and
 - vi. general guidance, social conduct and moral values
- b. the duty to protect the child from neglect, abuse, discrimination or other differential treatment;
- c. the duty to-
 - i. provide parental guidance in religious, moral, social, cultural and other values that are not harmful to the child;
 - ii. determine the name of the child;
 - iii. procure registration of the birth of his or her child;
 - iv. appoint a legal guardian in respect of the child;
 - v. receive, recover and otherwise deal with the property of the child for the benefit, and in the best interests, of the child;
 - vi. facilitate or restrict the migration of the child from or within Kenya;
 - vii. upon the death of the child, to arrange for the burial, cremation of the child or any other acceptable method of interment; and
- d. the duty to ensure that, during the temporary absence of the parent or guardian, the child shall be committed to the care of a fit person

(3)

(4) A person who does not have parental responsibility over a particular child, but has care and control over the child, may, subject to the provisions of this Act, do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child's welfare.

- 11. The appellant argues that in the distribution of the responsibility for the minor the trial magistrate erred by not considering that the respondent is a man of means and therefore assigning her the heavier responsibility.
- 12. I have considered the judgment of the trial court I observe that the Court correctly considered the factors to be considered in determining how the parents of a child ought to share parental responsibility by making reference to Section 114 (2) of the Children's Act, 2022.
- 13. Having found that the Court correctly exercised her discretion in arriving at her decision, I am guided by the Court of Appeal decision in *Kigira v Kigira* [2025] KECA 146 (KLR) where the Court citing the decision in the celebrated decision of *Mbogo & Another vs. Shah* [1968] EA 93 pronounced-



[5]the case of....delineated the parameters within which an appellate court can interfere with the exercise of discretion by the court appealed from. In order for us to accede to the appeal, we must be satisfied that the learned Judge misdirected herself in some matter and as a result, arrived at a wrong decision or it is manifest from the case as a whole that the learned Judge was clearly wrong in the exercise of her discretion and that as a result there has been injustice.

14. On this account, I will disallow the appeal and decline to disturb the judgment of the trial court.

15. As the respondent did not challenge the appeal, there shall be no order as to costs.

SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 15TH DAY OF MAY, 2025.

P M NYAUNDI

JUDGE

In the presence of:

Fardosa Court Assistant

Kamau for Appellant

