



**SAW v SLW (Children's Appeal Case E157 of 2024)  
[2025] KEHC 7735 (KLR) (Family) (5 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 7735 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
CHILDREN'S APPEAL CASE E157 OF 2024  
HK CHEMITEI, J  
JUNE 5, 2025**

**BETWEEN**

**SAW ..... APPLICANT**

**AND**

**SLW ..... RESPONDENT**

***(AN APPEAL FROM THE JUDGEMENT OF HONOURABLE  
MAGISTRATE JACKIE KIBOSIA (PM) DELIVERED ON 25TH  
OCTOBER, 2024 IN CHILDREN CASE NO. MCCHCC/E839/2024)***

**RULING**

1. In her application dated 19<sup>th</sup> November 2024 the Applicant seeks the following orders:-
  - (a) Pending the hearing and determination of the appeal this court be pleased to stay execution of the judgement delivered on 25<sup>th</sup> October 2024 in the Magistrate's Court namely Milimani children's case No. E839 of 2024 between her and the Respondent.
  - (b) The honorable court be pleased to order the Respondent to continue providing maintenance of Kshs.15,000 for the subject minor payable on or before the 5<sup>th</sup> day of every month.
  - (c) The court be pleased to order the Respondent to provide school fees and school related expenses when the minor commences school in the month of January 2025.
2. The Applicant asked for costs as well.
3. The application is opposed by the Respondent vide his sworn affidavit dated 12<sup>th</sup> March 2025.



4. The gist of the application is simple and straight forward. The trial court delivered its judgment on 25<sup>th</sup> October 2024 in which it apportioned both parties various responsibilities over the minor. The Applicant was to be responsible for shelter, clothing, food, utilities and care giver.
5. On the other hand, the Respondent was to shoulder school fees, medical expenses, maintenance and entertainment. The last two were to be paid per month.
6. The Applicant was not satisfied with the above judgement and filed an appeal herein together with the current application. Her substantive reason is that being a primary caregiver she will be forced to look for other sources of income to supplement what she was already directed to provide. In other words what the court directed that it be provided was not enough.
7. The Respondent has opposed the application on the grounds that the same cannot be implemented seeing that both parties have already began executing the same. He attached copies of email correspondences between the two advocates discussing the issues namely the minor's medical costs as well as the schooling.
8. He averred that the Applicant was blowing both hot and cold by asking for stay of execution of the judgment while on the other hand complying with it.
9. He therefore asked the court to disallow the same as he has not breached any of the orders issued and that on the issue of monthly payments it was unnecessary for the court to give specific dates noting that the word used was "monthly" which he has continued to honor.
10. The issue in my view is whether the appeal shall be rendered nugatory in the event of the application not being granted and or the Applicant and for that matter the minor shall suffer any prejudice.
11. I do not find any iota of evidence indicating that the intended appeal will be rendered nugatory nor the Applicant shall suffer any loss. It is not disputed that the parties have already implemented the trial court's judgement. There is no evidence from the Applicant that the Respondent for instance has failed to meet his side of the judgment.
12. In any case if he was to fail then the best way was for her to approach the trial court for contempt orders. As it is there is nothing.
13. At the same time the Applicant is happily implementing the judgement. He has presented the child to the hospital and the Applicant has indicated that if there is any pending bill, whether for drugs etc. which is not covered he was willing to top up. I think demanding that he comprehensively covers the minor medically without any sufficient evidence smacks bad faith on the Applicant's part.
14. She has further deposed that being a primary caregiver she will be forced to dig more to take care of the minor. Of course, that ought to be the case for any parent. I doubt whether the court was not alive to this when it apportioned responsibilities to the parties. Nonetheless that might be an issue taken during the appeal argument.
15. For now, I think it is easier to state that both parties must be satisfied with the directions from the trial court. Both must work hard and it cannot be that the Applicant assumes that her responsibilities are more onerous than those of the Applicant.
16. In any case if there is any breach of compliance from either side the trial court could be approached and this court does not need to stop its judgement. In other words, the Applicant has not placed before me any material to warrant a finding that the appeal shall be rendered nugatory if the application is not allowed.



17. The application is therefore unmeritorious and the same is dismissed with each party bearing its costs.

**DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAIROBI THIS 5<sup>TH</sup> DAY OF JUNE, 2025.**

**H K CHEMITEI**

**JUDGE**

