



**JAO v PAP (Family Appeal E090 of 2021)
[2025] KEHC 10053 (KLR) (Family) (10 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10053 (KLR)

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

**FAMILY
FAMILY APPEAL E090 OF 2021**

HK CHEMITEI, J

JULY 10, 2025

BETWEEN

JAO APPLICANT

AND

PAP RESPONDENT

RULING

1. In his Notice of Motion dated 7th July 2025 the Applicant prays that the minors be allowed to stay with their father during part of the April 2025 holidays.
2. The application is premised on the Applicant’s attached copy of a WhatsApp extract allegedly from the minor one Ivanka Grace.
3. The contents of the said WhatsApp is to the effect that the minor would wish to have some time to stay with the Applicant who is her father over some part of the school holidays.
4. The Respondent swore a replying affidavit dated 22nd April 2025 in which she deponed that the application has been overtaken by events and that all that the Applicant was doing was basically changing the terms of the orders by the trial court.
5. I have perused the application as well as the Applicant’s submissions.
6. I think the Applicant ought to have by now prosecuted his appeal. The prayers sought at this stage ought to be raised at the appellate level so that a meaningful decision can be arrived at. Otherwise, if the court was to entertain it, it will mean dealing with the appeal in a piecemeal manner.
7. The orders of the trial court which he has appealed against basically centers on the issue of custody. As it is now the Applicant has been granted limited custody of the two minors.



8. I therefore see no need to have the appeal argued in the manner the Applicant has taken.
9. At any rate and as rightfully deponed by the Respondent the same has been overtaken by events and the court cannot issue any orders in vain.
10. On the other hand, I note that the Applicant has made numerous applications of almost similar nature. I find it unreasonable in the circumstances. All that he ought to do is to prosecute his appeal.
11. The judgement at the trial court was issued on 29th July 2021. The memorandum of appeal was filed on 26th August 2021. Almost five years down the line no record of appeal has been filed and no efforts taken by the Applicant to have the appeal heard. In essence the appeal is yet to be set down for hearing while the Applicant is busy filing applications.
12. Consequently, the court directs as follows:-
 - (a) The application dated 7th April 2025 is dismissed with no order as to costs.
 - (b) The Applicant is hereby granted 45 days to process his appeal and in default the same shall stand dismissed.

DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 10TH DAY OF JULY 2025.

H K CHEMITEI

JUDGE

