



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**TMM (Suing as father and next friend of the Minors TMM & TKM) v FGK
(Civil Appeal 327 of 2023) [2025] KEHC 10577 (KLR) (17 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10577 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CIVIL APPEAL 327 OF 2023**

RC RUTTO, J

JULY 17, 2025

BETWEEN

**TMM (SUING AS FATHER AND NEXT FRIEND OF THE MINORS TMM &
TKM) APPELLANT**

AND

FGK RESPONDENT

RULING

1. Before this court for determination is a Notice of Motion dated 13th December 2023, seeking orders that both parents of the minors, TMM and TKM, contribute equally towards the payment of school fees and related expenses at their current school, pending the hearing and determination of the appeal.
2. The Application is supported by the grounds on the face of the application and on the supporting affidavit sworn on 13th December 2023 and further supporting affidavit sworn on 12th May 2025 by TMM.
3. The applicant states that he filed a case before the Senior Principal Magistrates Court at Mavoko, being Children's Case No. E037 of 2023, In the Matter of TRM (Minor). Judgment was delivered on 24th November 2023, where the trial court directed the Applicant to cater for the school fees and school-related expenses of the minors at their current school. Dissatisfied with part of the said judgment, the Applicant lodged this appeal.
4. The Applicant states that one of the minors, TMM, is currently enrolled at [Particulars Withheld] School, where the school fees per term amounts to Kshs.123,800/=, payable in full before the commencement of each term. The other minor, TM, attends [Particulars Withheld] Academy, where the school fees per term is Kshs.89,249/=, also payable in full prior to the start of the school term. These fees exclude school-related expenses, which he estimates at approximately Kshs.50,000/=. The Applicant, states that he is a lecturer by profession, asserts that he is unable to shoulder the full cost



of the school fees and related expenses alone. He maintains that the Respondent, being gainfully employed, is financially capable of contributing to these expenses without undue strain. He further states that the schools are due to reopen in January 2024, and without the orders sought, he will be unable to meet the financial obligations previously shared between both parents. He clarifies that he does not object to contributing towards the minors' education, but that he is financially incapable of bearing the entire burden alone. The Applicant contends that unless the court grants the orders sought, he will be financially overwhelmed and unable to comply with the lower court's orders, which may lead to contempt proceedings being initiated against him by the Respondent.

5. In his further affidavit the applicant deposed that he has not been able to meet the fees for TMM to join university as he is only capable of meeting half of the fees and school related expenses. That the respondent has taken a show cause against him and the court is to deliver a ruling on 22nd May 2025. He urges that this court directs the parties to contribute equally towards the education of the minors since the school fees is huge and he is not able to meet while he still has other responsibilities pursuant to the judgment.
6. The Application was not opposed by the Respondent despite her being served with the Application.
7. The Appellant/Applicant filed a further affidavit sworn on 12th May 2025, in which he reiterated that upon filing the present application and no ex parte orders granted, he continued to cater for the school fees and related expenses in compliance with the judgment of the lower court. He further stated that the minor, TMM, has since completed her secondary education and received admission to the [Particulars Withheld] University of Eastern Africa, where a total of Kshs.112,100/= is payable as tuition and administrative fees, with additional emoluments exceeding Kshs.200,000/=.
8. The Applicant deposed that he has been unable to raise the requisite funds to enable TMM to commence her university education. Despite informing the Respondent of his financial difficulty, she proceeded to file a Notice to Show Cause against him. The lower court is scheduled to deliver its ruling on 22nd May 2025 on whether warrants of arrest shall issue against the Applicant.
9. I note that the Appellant/Applicant did not wish to file written submissions, and as such, the court proceeded to schedule the matter for ruling on the present application.

Analysis and Determination

10. I have considered the affidavits by the Appellant/Applicant made in respect of the present application and it is my view that there is only one issue for determination; whether the court should issue orders compelling both parents to equally contribute towards the minors' school fees and related expenses pending the hearing and determination of the appeal.
11. The Appellant/Applicant avers that the lower court's decision dated 24th November 2023 placed the entire financial burden on him and that he is unable to comply due to financial constraints. The Appellant has further revealed that he continued to comply with the trial court's orders. However, his inability to meet the escalating fees or school fees related costs has led the Respondent to file a Notice to Show Cause in the lower court with a Ruling scheduled for 22nd May 2025.
12. The court notes from the Affidavit of Service sworn on 18th March 2025 that the Respondent was duly served with the hearing notice of the present application. However, she neither appeared, filed a response, nor was represented by counsel.
13. The court further observes that the Appellant has claimed financial hardship. However, no supporting evidence has been provided to substantiate this claim. Additionally, the Appellant despite claiming that prior to the lower court's judgment, both parents jointly contributed towards school related expenses



has not demonstrated that there was any prior arrangement between the parties to jointly contribute towards the payment of school fees and related expenses. These remain unproven assertions.

14. The principle of the best interests of the child under Article 53 (2) of the Constitution of Kenya and the African Charter on the Rights and Welfare of the Child mandates that all decisions affecting children must give primary consideration to their wellbeing.
15. The Appellant maintains that, due to his current financial circumstances, he is unable to meet the full termly school fees amounting to Kshs.263,049. He further asserts that the Respondent is financially capable of contributing towards these expenses but has deliberately opted not to do so. However, the court notes that no documentary evidence has been presented to substantiate either the appellant's claim of financial incapacity or the Respondent's alleged ability to contribute. As such, these remain unverified assertions.
16. In light of the unsupported assertions raised, this court observes that the lower court's orders were issued after consideration of the evidence presented at the time. Those orders remain valid and enforceable, as no stay has been granted to stay their implementation. Further, while the appeal challenges the portion of the judgment relating to the same reliefs sought in this interlocutory application, it is notable that certain circumstances have since changed. Specifically, one of the minors has completed secondary school and has gained admission to university.
17. This development constitutes a material change in circumstances that raises new issues, which cannot be addressed for the first time at the appellate level. Consequently, the court finds it appropriate to remit the matter back to the trial court for a reassessment and reconsideration of the orders granted given that children matters keeps evolving and in light of the changed circumstances.
18. In view of the above, I decline to issue an order directing that both parents contribute equally to the minors' school fees and related expenses at this stage, as doing so would amount to granting final orders prematurely and determining the main issues in the pending appeal. However, this court acknowledges the best interests of the minors and the Applicant's financial hardship.

1. Therefore, in the interim, I direct that;
 - a. The parties herein to within 14 days of this Ruling file an affidavit of means before the trial court to enable the trial court to assess the parties' capacity and consider appropriate orders that may be issued given the change of circumstance.
 - b. The appellant to file its Record of Appeal within 30 days from the date hereof to facilitate its timely hearing of the appeal.
 - c. The Respondent be personally served with this order for compliance..
 - d. Each party to bear its own costs of the application.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 17TH DAY OF JULY, 2025.

RHODA RUTTO

JUDGE

In the presence of;

.....Applicant

.....Respondent



