



GJ v EKM (Civil Appeal E171 of 2025) [2025] KEHC 13095 (KLR) (23 September 2025) (Ruling)

Neutral citation: [2025] KEHC 13095 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL APPEAL E171 OF 2025
RN NYAKUNDI, J
SEPTEMBER 23, 2025**

BETWEEN

GJ APPELLANT

AND

EKM RESPONDENT

RULING

1. What is pending before this court for determination is Chamber Summons Application dated 26th August 2025 brought pursuant to section 3 & 3A of the *Civil Procedure Act*, Rule 3(1) of the High Court Practice and Procedure Rules where the Applicant is seeking the following orders: -
 - a. Spent
 - b. Spent
 - c. This Honourable Court be pleased to make such further or other orders as it may deem just and expedient in the circumstances of the case.
2. The Application is made on the following grounds on the face of it among others: -
 - a. That this court vide its ruling delivered on 11th August 2025 ordered interalia that the Respondent/Applicant remits a sum of Kshs. 15,000/= (read fifteen thousand shillings only) monthly towards the subject's upkeep.
 - b. That the aforesaid sum was quantified by this Court without considering:
 - a. The Respondent/Applicant's earning capacity in total contravention of section 114 (2)(a) of the Children's Act, 2022.
 - b. The fact that the Appellant/Respondent unilaterally chose the school the subject is currently attending whose school fees payable further compromises the Respondent/Applicant's financial liquidity.



- c. That the amount ordered by the court is beyond the Respondent/Applicant's earning capacity hence rendering review necessary.
 - d. That there is a likelihood of the Respondent/Applicant being committed to civil jail should he not comply with the impugned maintenance orders hence rendering appropriate orders necessary in the best interest of justice.
 - e. That if this application is not heard, disposed off expeditiously and the orders sought therein granted, the Respondent/Applicant stands to suffer untold damage as he is likely to be committed to civil jail for his inability to fully satisfy the maintenance orders in force, a factor beyond his control.
 - f. That appropriate orders ought to be made in the best interest of justice.
 - g. That no prejudice will be occasioned to the Appellant/Respondent if the orders sought herein are granted as prayed as the Respondent/Applicant will struggle to continue providing educational needs and upkeep of kshs. 5,000/= pending the determination of the appeal.
 - h. That the ends of justice will be served by allowing this application as prayed.
3. The chamber Summons is supported by the annexed affidavit sworn by the Applicant whose averment echo the grounds of the application.

Response to the Chamber Summons Application

4. The Application is opposed vide a Replying Affidavit dated 10th September 2025 sworn by the Appellant/Respondent who deponed as follows;
- a. That the Respondent is a man of means, well able to pay the Kshs. 15,000. It is not true at all that he is struggling financially. He has been sustaining a lavish lifestyle and has admittedly been on drinking sprees most nights as in the annexures marked GJ1 which is an extract of a message he sent to me via What's App.
 - b. That as one of the previous directors in Tergodent Dental Centre, I could receive updates on my mobile phone of every transaction to one of the dental clinic accounts at Eco Bank, which shows that the business is doing well. Annexed and marked GJ 2 a to f are some extracts from the said account which shows how the respondent can spend Kshs. 8050, kshs 9,750 up to kshs 15,000 at clubs such as in Simba Village Limited in a single sitting. The others show how he can receive big credits in cheque deposits to his account as he also works for some corporate institutions yet he has claimed that he is unable to pay maintenance fee of kshs 15,000 per month for the minor.
 - c. That I am therefore surprised by the respondent's allegation that it is because of financial constrains that I pulled out of the said dental business. The truth is that the respondent fraudulently removed me from the said business and transferred all my shares to himself without my knowledge involvement or consent and did not give me any money despite me being the majority shareholder as he has admitted in GJ 1 above.
 - d. That sometimes in May 2025, I found an email requesting me to verify the veracity of an application for change of officials that had been sent to me as an outing director. Having not made any such application, I immediately conducted a search on Trigodent Dental Centre and



Supplies LTD and found out that the fraudulent applications where my signature has been forged to remove me as a director and the respondent had transferred all shares to himself.

- e. That the said affidavit is purportedly signed by myself, and sworn before an advocate in Nairobi on the 19th of May,2025, one Kipyator Kibet S Associates who is a stranger to me and I have never been to his office. Besides on the said period between the 15th May,2025 and 19th May,2025, I was on sick leave having been discharged from hospital and could not have traveled to Nairobi or engaged in such alleged transactions. Annexed and marked GJ 4 an and b are copies of sick off sheets.
- f. That It is even apparent from the signatures in my pleadings herein and the said documents that they are different. Realizing what the respondent was doing, I feared confronting him about the same due to the previous assaults on me and after some soul searching I completed the said request and signed off from the said business, choosing peace and wishing to disassociate myself once and for all from the said business where I was just a puppet and never benefited from it. The respondent was the one transacting in the two accounts, though I only received mobile updates in one account, which I am not sure if he is aware of as he could have locked me out. I am still open though to pursue forgery charges against him and other remedies available to me from the said fraudulent action in a separate suit.
- g. That consequently I humbly urge this honorable court pursuant to section 1213(a c) of the children's Act 2022, to order for an Inquiry as to the respondents means such as income, assets and liabilities including requiring him to furnish statements for the last one year of for the two Tergodent Dental Centre accounts being account number 6610007502 at Ecobank Eldoret branch and at SMB BANK through Pay bill No.972524, where the clients also deposit money, so as to ascertain the truth about his financial status this will enable this honorable court to arrive at a just determination of this issue, all in the best interest of the minor.
- h. That from the above, the unbecoming character of the respondent clearly comes through as a person who is not genuine and cannot be trusted. He is clearly hell bent to make my life miserable and I believe that he is using the subject minor herein to settle scores with me.
- i. That it is not true that it is I who unilaterally chose the school the subject is currently attending. The respondent chose the said school and I supported him as I believed it will provide a good foundation to the minor and even paid all the school fees thereto in the early years of the minor's schooling from the year 2021 when the minor started school. This was in addition to providing all other educational needs for the minor despite the respondent being well able to provide but was reluctant.
- j. That it took much persuasion even through his friends after it became overwhelming to me to cater for most needs of the family, for him to start paying some school fees for the minor towards the end of 2023, after I had been paying for over 2 years alone, including paying for the house rent sometimes to avoid eviction. Provision of other needs for the minor was also sporadic, and inadequate on his part.
- k. That it became evident soon thereafter When I was served with pleadings. In Children's suit No. E041 of 2025 (the trial suit) in which suit the respond is seeking unlimited access of the minor, that he was laying a basis of him being a responsible father in a bid to hood wink the court to grant him access orders to the minor. He attached the said M-pesa statements in support of his claim. Annexed herein and marked GJ 7 is copy of the M-pesa statements which he filed.



- l. That from the above it is evident that the respondent is well able to comfortably pay the minor's school fees and pay the interim monthly maintenance fee and more as the court may direct from time to time in the best interest of the minor. He has just been withholding to support the minor unless it suits his interests to do so.
- m. That the fact that I am gainfully employed on a permanent basis does not mean that I should unjustifiably bear unequal responsibility of maintaining the minor when the respondent is well able to take up his role on an equal parental basis as enshrined in article 531 (e) of *the constitution*.
- n. That the respondent has failed to establish that the said dental clinic which has monthly overheads of over Kshs 100,000 is unable to pay a paltry Kshs 15,000 monthly for maintenance of his son, the subject herein.
- o. That I believe that the respondent is waging a personal war against me at the detriment of the minor. Thinking that the said money is to benefit me and not the minor. This is not because the said business has financial constraints. Finances was a basis of some of the bitter misunderstandings I had with him.
- p. That the respondent always believed that being a permanent employed nurse, I earn a lot of money and should be able to cater for everything without complain he always demanded me for my pay slip which I always denied to give him and as result he could beat me and forcefully drive me to My co-operative bank ATM where he could forcefully make me to withdraw money for him after which he could disappear for days before coming back home.
- q. That as correctly admitted by the Respondent in paragraph 24 of his supporting affidavit that as stipulated by law, parental responsibility should be equally shared. Section 312 (a) of the children's Act 2022, provides some of the provisions that the parties have to share, out of which the respondent has been directed to provide school fees and school needs, together with an interim of Kshs 15,000 monthly. I am already providing for all the rest which includes all medical needs for the minor, including those not covered by my insurance cover, and transport to and from hospital when need arises, home clothes for the minor, a house girl (Kshs 7,000 monthly), entertainment for the minor etc. which provisions in the interim far outweighs what the respondent is providing.
- r. That it is therefore not in good taste that the respondent is requesting for the interim maintenance fees to be reduced from Kshs. 15,000 to Kshs. 5,000 monthly. Suggesting that the Kshs. 5,000 to care for supper and weekend food for the minor while out of school. This translates to Kshs. 167 daily. The subject minor requires enough and nutritious meals to grow. The meals at school are only basic to sustain the minor while at school, it is at home, where he should be sufficiently provided for.
- s. That Kshs. 15,000 is the least he should pay in the interim, in my counterclaim I have prayed for Kshs. 50,000 monthly in the counterclaim in Children's suit No. E041 of 2025, pursuant to section 1142 (e) and (g) of the children's Act 2022 and I know the respondent has the ability to provide for the same. Kindly find annexed herein a copy of the counter claim annexed and marked GJ 9.
- t. That, unlike the respondent I do not have a car, hence I have been hiring taxis to take me to and from work and for errands as I am also generally unwell. Similarly I use the said taxis more often when I have to take the minor to hospital, in view of his ill-health. I pay the said taxi services monthly on a negotiated fee, to be on call whenever I will need them, regardless of the many



times I use their services within Eldoret town. Annexed and marked GJ 10 are samples of my taxi expenses monthly.

- u. That I have no objection to the court directing that the subject herein be examined by a qualified and independent pediatrician, save that the said pediatrician should be directed to make and or call for reference on the treatment history of the minor from the various hospitals that he has been treated since birth such as Reale Hospital and St Luke's Hospital and sometimes at Ambiance Hospital, as the minor's illness is recurrent. This is to enable the said pediatrician to make a comprehensive report on the minor's health. My prayer is that this honorable court do direct that the respondent to cater for the expenses for the said independent pediatrician and the minor to be accompanied by both parties during the said visit.
- v. That considering that the respondent did not give me any of my shares from the said company where I was a majority shareholder, he should at least use the proceeds for the interest of the minor, it is the least he can do.
- w. That I therefore pray that the said interim amount of Kshs. 15,000 is fair in the interim, and it should not be disturbed.
- x. That unless the specific orders for the monthly maintenance of the minor and even school fees remain in force all through the dependent years of the minor, I am apprehensive that the respondent may not be keen to provide for the minor at all. He may stop at some point and the minor will suffer irreparably. Seeing that he has stopped sending me any money for the minor's maintenance, even the interim amount ordered by this Honourable Court.

Analysis and Determination

- 5. I have read and considered the chamber summons application, the affidavit in support and also the replying affidavit in opposition. There is one issue manifest for determination as follows: -

Whether the Application is merited?

- 6. The child's best interests are paramount and must inform every determination affecting a child. Article 53(2) of *the Constitution* makes this principle explicit and the *Children Act, 2022* was enacted to give effect to those constitutional obligations and in particular section 8 of the Act. Specifically, Article 53(2) of *the Constitution* provides as follows:

Children.

53.

- (1) Every child has the right—
 - (a) to a name and nationality from birth;
 - (b) to free and compulsory basic education;
 - (c) to basic nutrition, shelter and health care;
 - (d) to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour;



- (e) to parental care and protection, which includes equal responsibility of the mother and father to provide for the child, whether they are married to each other or not; and
- (f) not to be detained, except as a measure of last resort, and when detained, to be held
 - (i) for the shortest appropriate period of time; and
 - (ii) separate from adults and in conditions that take account of the child's sex and age.

(2) A child's best interests are of paramount importance in every matter concerning the child.

7. The UN Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child have also both emphasized the centrality of the best interest of the child. The first Schedule of the Children's Act sets out the principles to guide in determining the best interests of the Child. The best interest of the child is to be determined based on the circumstances of each individual case. Consideration of what constitutes the Child's best interest will be guided by the basic rights of the child which are provided for under *the Constitution* of Kenya; *Children Act* and International Instruments, which have been ratified in Kenyan Law. In case of *Ma vs Roo* [2013] eKLR, the Court stated as follows:

What is the best interest of the child has not been defined by the law? This is as it should be because the best interest of each particular child will depend on the circumstances of each particular case at any one particular time. What is not in dispute, however, is that there are certain minimum requirements that have universally been accepted to constitute the best interest of the child. This includes the right of a child to be provided with shelter, food, clothing and education. The child is entitled to medical care. The child's welfare should be taken care of under the best possible circumstances.

8. Section 114 of the *Children Act* 2022 provides the statutory compass for maintenance orders. It requires the Court, in making maintenance orders, to consider "all the circumstances of the case" and be guided by specified considerations, including the income or earning capacity, property and related factors of the parties. In short, the Court must have regard to ability to pay when fixing maintenance. The Act also expressly empowers the Court to vary, suspend or modify maintenance orders and to conduct enquiries into the means of a person subject to a maintenance order. In particular:

- (i) section 119 empowers the Court to vary, modify or temporarily suspend a financial provision order; and
- (ii) the enforcement provisions (under the Part dealing with enforcement of maintenance / contribution orders) permit the Court, prior to making enforcement or committal orders, to hold an enquiry as to the respondent's means and to direct searches of the respondent's income, assets and liabilities or require statements of means from employers, auditors or other persons. The Act also confers powers to issue warrants of committal where there is willful and persistent refusal to pay, but only subject to the statutory safeguards and after enquiry.



9. This Court also has inherent and statutory powers to make such orders as are necessary for the ends of justice and to prevent abuse of process as provided for in the Civil Procedure Act in section 3 and section 3A. The provide as follows, “3A. Saving of inherent powers of court. Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. The High Court Practice Rules supplement the Court’s procedural competence to make interlocutory orders on urgent applications.
10. From the case at bar, the starting point is the best interests of the child, which are the paramount consideration in matters of maintenance. The maintenance sum previously fixed (Kshs. 15,000) is an interim direction intended to secure the child’s immediate needs pending final determination. The Children Act requires the Court to consider the earning capacity of the parties when fixing maintenance. Where a party asserts inability to pay, the Act contemplates a structured enquiry into means before the Court reduces or suspends maintenance, particularly where the decree or order for maintenance is already in force or where there is a risk of enforcement measures such as committal.
11. The jurisdiction before this court is on appeal against the impugned ruling dated 22.7.2025. In granting stay the other issue which was addressed by the court was in relation to maintenance of the minor pending the outcome of the appeal. The exercise of appellate jurisdiction of this court is now well settled as stated in the case of Peters v Sunday Post Ltd 1958 EA 429 in which it was observed “The court on first appeal has jurisdiction to review the evidence in order to determine whether the conclusion originally reached on that evidence should stand. It is a strong thing for an appellate court to differ from the finding on a question of fact of the judge who tried the case and who has had the advantage of seeing and hearing the witness. But the jurisdiction to review the evidence should be exercised with caution: it is now enough that the appellate court might itself have come to a different conclusion.
12. That the matters being raised by the Applicant in the application dated 26.8.2025 with regard to the temporary maintenance quantum of Ksh.15,000 appears to be a contentious issue between the parties as of now. This court in terms of Section 1(A) 1(B) 3, 3(A) and Section 80 of the Civil Procedure Act as read with Order 45 Rule 1 of the Civil Procedure Rules issues interim interdict of its implementation pending the outcome of the appeal.
13. As the appeal is only based on interlocutory ruling, both counsels are invited to file brief skeleton submissions so that the issues at stake can be resolved at the very earliest to give way for the trial court to determine the subject matter on the merits. The appellant is put on notice that the trial court is yet to determine the interlocutory issues surrounding the protection and enforcement of survival rights of the minor as provided for under the Children’s Act. As a consequence therefore, the Appellant has 7 days to file submissions touching on the impugned ruling of the trial court. Thereafter the Respondent shall also file a rejoinder to the submissions within 7 days. Highlighting on 16.10.2025. The costs of this application be in the cause.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 23RD SEPTEMBER 2025

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R. NYAKUNDI

JUDGE

