



VOO v ETM (Sued as the Mother and Next Friend of JPA (Minor)) (Civil Appeal E064 of 2025) [2025] KEHC 12935 (KLR) (Family) (16 September 2025) (Ruling)

Neutral citation: [2025] KEHC 12935 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
CIVIL APPEAL E064 OF 2025
H NAMISI, J
SEPTEMBER 16, 2025**

BETWEEN

VOO APPELLANT

AND

ETM RESPONDENT

SUED AS THE MOTHER AND NEXT FRIEND OF JPA (MINOR)

RULING

1. The genesis of the dispute herein lies in the judgement delivered on 6 January 2020 by Hon. Otindo, RM in Nairobi Children Case No. 543 of 2018. In that judgement, the Appellant was directed to provide school fees and related expenses for the minor. The court directed the parties to consult and transfer the minor to a cheaper school that the Applicant could afford. At the time of the judgement, the minor was enrolled at New Prospect Kindergarten, where the fees per term was Kshs 34,000/-.
2. The Applicant filed an application seeking to vary the judgement. A ruling was rendered thereon by Hon. C. Oluoch, CM on 23 August 2024 dismissing the Applicant's prayer to full custody of the minor. Instead, in a partial review, the court ordered that each parent would be responsible for the salary of a house help.
3. On 30 October 2024, the Respondent herein filed Notice to Show Cause, seeking a sum of Kshs 1,462,725/- from the Applicant, which sum related to arrears of school fees and related expenses. The Applicant opposed the application, arguing that the Respondent, in contravention of the original judgement, had unilaterally transferred the minor to a more expensive institution, [Particulars Withheld] International School, without any consultation. The fees at the said school exceeded Kshs 106,000/= per term.



4. In his Ruling on 22 January 2025, Hon. B. Ochoi, CM, found the Applicant to be in disobedience of the court's orders regarding school fees. However, the learned Magistrate acknowledged that the Respondent had acted contrary to the court's judgement by enrolling the minor in a more expensive school without consultation or proof of any attempt to contact the Applicant. The Court ordered that the school fees arrears would be calculated at the rate of Kshs 34,000/= per term, being the fees payable in the minor's original school.
5. Following the Ruling, parties were accorded time to reconcile their accounts. On 25 March 2025, noting that the Applicant herein had provided evidence of payment amount to Kshs 308,000/-, the court directed that the outstanding sum of Kshs 134,000/= would be paid in five equal monthly instalments of Kshs 26,800/= with effect from 5 April 2025. The Applicant was directed to continue with other payments as scheduled.
6. Dissatisfied with this Ruling, the Applicant herein lodged an appeal before this Court. The Applicant also filed Notice of Motion dated 30 April 2025 seeking the following orders:
 - i. That the Court be pleased to stay execution of the Ruling of the Hon. Bernard Ochoi given at Nairobi on 22 January 2025 and the subsequent directions issued on 25 March 2025 pending the hearing and determination of this Application;
 - ii. That the honourable Court be pleased to allow the Applicant to remit a monthly sum of Kshs 10,000/= pending hearing and determination of the Application and the appeal;
 - iii. That the Court be pleased to stay execution of the Ruling of the Hon. Bernard Ochoi given at Nairobi on 22 January 2025 and the subsequent directions issued on 25 March 2025 pending the hearing and determination of the appeal;
 - iv. That the costs of the Application be provided for;
 - v. That such further and other relief be granted to the Appellant as this Court deems fit and expedient in the circumstances.
7. The Application is supported by the Affidavit sworn by the Applicant as well as a Further Affidavit sworn on 27 May 2025. The Applicant claims that he has been diligently remitting a monthly sum of Kshs 8,000/= towards the minor's upkeep and offers to increase this amount to Kshs 10,000/= per month pending the hearing and determination of the appeal. It is the Applicant's case that his financial situation has changed and his financial burden has increased exponentially since 2020.
8. The Application is opposed. In her Replying Affidavit, the Respondent cites the history of non-compliance with court orders dating back to 2018, which necessitated the filing of multiple Notices to Show Cause. It is the Respondent's case that the outstanding sum of money is money that she already incurred for the minor's education and which is owed to her by the Applicant.
9. From the record before me, it is clear that the wrangles between the parties herein are not about to end. This is rather unfortunate because an innocent child is caught up in the midst of it all.
10. In all matters concerning a child, this Court is bound by the primary consideration that the best interests of the child must be the paramount concern. This is a constitutional command under Article 53(2) and is a central guiding principle in section 8 of the *Children Act*.
11. The Applicant's plea for reduction in his maintenance obligations is largely based on the emergence of new financial responsibilities, including new family and an ailing mother. While section 119 of the *Children Act* allows a court to vary a maintenance order based on a significant change in circumstances,



a parent's responsibilities to a new family do not absolve or diminish their pre-existing obligations to an older child. The law expects a parent to provide for all their children equitably.

12. The Applicant comes to this Court seeking an equitable relief, but it is clear that he does not do so with clean hands. His claim of diligence in his payments is contradicted by his own evidence. The inconsistency in payments suggests a reactive response to the Respondent's repeated filings of Notices to Show Cause. This pattern of behaviour casts doubt on the Applicant's stated commitment and willingness to provide for the minor.
13. While the Appellant's inconsistency undermines his case herein, this Court must balance the need for the minor's continued maintenance with the Appellant's demonstrated financial limitations. The Appellant has offered to pay Kshs 10,000/= per month, an amount which may be insufficient to address the arrears, since it would take 13 months for the Applicant to clear the same. A fairer proposal would be to settle the outstanding sum in 8 monthly instalments of Kshs 16,750/=.
14. In balancing the interests herein, I make the following orders:
 - i. A stay of execution of the Ruling delivered on 22 January 2025 and the directions issued on 25 March 2025 is hereby granted pending the hearing and determination of the appeal and on the condition indicated in (ii) below;
 - ii. The Applicant shall, in the interim, remit a monthly sum of Ksh 16,750/= to the Respondent beginning 30 September 2025 and every 28th day of the succeeding month, pending the final determination of the appeal.
 - iii. In default of any one instalment, the stay of execution granted in (i) shall lapse and the Respondent shall be at liberty to execute without any further reference to the Court;
 - iv. The Applicant shall continue to meet his other obligations in respect of the minor;
 - v. Parties shall file and serve their respective submissions for the appeal within 42 days of the date hereof, 21 days each, commencing with the Appellant;
 - vi. Costs of the application shall be in the cause.

DATED AND DELIVERED AT NAIROBI THIS 16 DAY OF SEPTEMBER 2025

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

Applicant: Mr. Oloo

Respondent: Ms. Nzuki h/b Ms. Murimi

Court Assistant: Lucy Mwangi

