



**CKM v PWG & another (Miscellaneous Civil Application E001 of 2023)
[2024] KEHC 1318 (KLR) (Civ) (15 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1318 (KLR)

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

CIVIL

MISCELLANEOUS CIVIL APPLICATION E001 OF 2023

HK CHEMITEI, J

FEBRUARY 15, 2024

IN THE MATTER OF THE ENFORCEMENT OF RIGHTS

AND

IN THE MATTER OF SUPERVISORY JURISDICTION OF THE HIGH COURT

AND

IN THE MATTER OF SECTION 29 OF THE CHILDREN’S ACT NO.29 OF 2022

IN THE MATTER OF T. W. K (MINOR)

BETWEEN

CKM APPLICANT

AND

PWG 1ST RESPONDENT

DWW 2ND RESPONDENT

RULING

1. This ruling relates to the application dated 2nd January, 2023 filed by the Applicant, CKM. It seeks for orders that:
 - a. Spent.
 - b. Granted.
 - c. Pending hearing and determination of this application and in the best interest of the minor there be a stay of proceedings in Milimani Children’s Cause No. 795 of 2019.



- d. The Honourable Court be pleased to exercise its powers under Section 29 of the Children’s Act 2022 and its supervisory jurisdiction over subordinate courts and call for Milimani Children’s Case No. 795 of 2019 CKM -v- PWG & Another for purposes of satisfying itself as to the correctness of the orders issued by Hon. Jackie Kibosia P. M. summarily directing the arrest “...without further warning to parties,” issued on 8th December, 2022.
 - e. The proceedings of the lower court be re – allocated and heard by a different court.
 - f. This Honourable Court be pleased to grant any other orders that it may deem fit in these circumstances to grant.
 - g. The costs for this application be borne by the respondents.
2. The application is opposed by replying affidavit sworn on 16th February, 2023 by PWM.
 3. The Applicant and Respondents filed written submissions dated 7th September, 2023 and 11th August, 2023; respectively.

Background

4. This matter relates to access of the minor between her biological father, the Applicant, and her maternal grandparents, the Respondents.
5. The Respondents were the primary caregivers of the minor from when she was a little child when her biological mother (now deceased) moved back to their home on account of chronic illness and mistreatment from the Applicant. The Applicant avers that she moved back to her parents’ home so that he could focus on raising funds for her treatment.
6. When the minor’s biological child’s mother died, the Applicant filed suit for actual and legal custody of the minor which was granted with a rider that the Respondents be granted reasonable access to the minor and for her transition to a new school be done in a structured manner so as not to affect her schooling.
7. The parties failed to agree on the modalities related to the Respondents access to the minor and they severally waited for the minor to be availed to them by the Applicant but he never showed up and never gave any explanations.
8. The Respondents are concerned about the minor’s well being and progress at school and allege that the Applicant had previously neglected her when her biological mother was still alive and further that the minor has communicated to them that the Applicant leaves her alone with her step brother, does not take good care of her and that if they do not take her, she will escape and find her way to her grandparents’ home.
9. Due to the parties’ inability to reach a consent on the modalities of the Respondents’ access to the minor, Hon. P. M. Jackie Kibosia provided a structured mode of access. This application therefore impugnes on the said structured directions of the lower court which went ahead and issued a warrant of arrest against the applicant.

Analysis and Determination

10. I have carefully considered the application, the reply as well as the written submissions filed by the parties and the cited authorities. The issues for determination as crafted by the parties are as follows:



- a. The Applicant: Whether the applicant has established a threshold for this honorable court to exercise its supervisory jurisdiction. Whether the current trial court had jurisdiction to alter the judgment of a court of competent and concurrent jurisdiction.
 - b. The Respondents: Whether the proceedings in the Milimani Cause No. 795 of 2019 should be stayed. Whether this Honourable Court should exercise its supervisory jurisdiction over the subordinate court and call for MCC 795 of 2019. Whether the proceedings in the lower court be re -allocated and heard by a different court. Whether the stay on the warrants of arrest issued on the 3rd of January, 2023 should be lifted. Who should bear the costs.
11. Looking wholesomely the proceedings herein the issue is basically the implementation of Hon G M Gitongas decree. I have perused it and clearly all that he did was to allow room for the parties to decide on the best interest of the minor.
 12. The contentious issue is not who should have the actual custody of the minor but how she will pursue her education as well as access to her grandparents, the respondent's.
 13. The decision by Hon Kibosia was essentially a follow up on the above. She did not alter the decree of her colleague. All she did was to give effect.
 14. The court stated In MAK v. RMA & 4 Others (Petition 2 [E003] of 2022 [2023] KESC 21 (KLR) (Civ) (2 March 2023) (Judgment) where the Supreme Court stated at paragraph 87 that, "... Courts, therefore, while making a decision that will impact the child are mandated to consider all circumstances affecting the child..." and at paragraph 88, "... We need to emphasize that it is never in the best interest of a child when the parents are engaged in a protracted court battle. Court battles relating to children are more often than not very selfish in nature and it is easy to overlook the psychological and mental harm done to the child in the process... [emphasis mine]"
 15. What is the best interest of the minor? It is for her to enjoy her schooling and all the related necessities as provided by the parents and or guardians.
 16. Both the applicant and the respondents in my view have the best interest of the minor. They must however find a mode that is convenient. The applicant despite being granted full custody of the minor as her father frustrated the efforts of the respondents. He must as well comply with the law.
 17. The court clearly gave guidance on how the minor was to be handled by both parties. The applicant in my view tried circumventing the same by failing to account on how the child will go to school and which school and more importantly allowing her to access her grandparents.
 18. In this respect the only option was for them to seek legal redress. The court granted them the orders including the arrest of the applicant.
 19. I must state that it becomes embarrassing in such situation to have the applicant arrested because of failing to adhere to the directives of the court. I do not agree that he was unable to attend court because of the failure of his counsel to advise him. Based on his past conduct the same was clearly deliberate.
 20. In the premises I do not find the applicant having approached this court with clean hands. Let him comply with the structured way the court has fashioned for and on behalf of himself, the respondents and above all the child. In any case he still has the child almost all the time and no one has denied him such.
 21. The application is otherwise dismissed with no order as to costs.



DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 15TH DAY OF FEBRUARY 2024.

H K CHEMITEI

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JUDGE

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

