



**CKM & KUM (Children Suing Through NGMN) v RMK (Civil Appeal E061 of 2022) [2024] KEHC 1386 (KLR) (14 February 2024) (Judgment)**

Neutral citation: [2024] KEHC 1386 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT EMBU  
CIVIL APPEAL E061 OF 2022  
LM NJUGUNA, J  
FEBRUARY 14, 2024**

**BETWEEN**

**CKM & KUM ..... APPELLANT  
CHILDREN SUING THROUGH NGMN**

**AND**

**RMK ..... RESPONDENT**

*(Being an Appeal from the Ruling of the Hon. H. Nyakweba SRM given of 31st October 2022 in Embu CMCC No. E009 of 2021)*

**JUDGMENT**

1. Before the court is a memorandum of appeal dated 24<sup>th</sup> November 2022 through which the appellant seeks for orders that the appeal be allowed and the impugned ruling be set aside with an order for the specific amount to be paid by the respondent every month. The appeal is premised on grounds that the trial magistrate erred in fact and law:
  - a. By not stating the amount the respondent is supposed to pay every month;
  - b. By not specifying the role of each parent; and
  - c. By failing to specify the amount that each parent is supposed to contribute as parental responsibility.
2. Appellant filed a plaint dated 29<sup>th</sup> March 2021 seeking judgment against the respondent for periodic and lumpsum payments toward maintenance of the minors as well as education expenses and costs of the suit. The respondent filed his amended statement of defense amended 05<sup>th</sup> August 2021 stating that he is not the biological father of KUM and is therefore not responsible for the minor's subsistence. That he had been maintaining CKM who is his biological child since birth and had been sending Kshs.



- 10,000/= monthly. That the said minor is not of school-going age and that demanding for school expenses from him is premature.
3. At the hearing, PW1 was the appellant who stated that at the time when she got married to the respondent, she had already given birth to CKM and got KUM later. That the children attend school and she produced the school records for both children. She also produced the birth certificates for both children as evidence. That she is employed and earns an income and that before she separated with the respondent, they used to pay the children's school expenses together but after the separation, she pays all the expenses by herself.
  4. That the biological father of CKM is estranged and she does not know his whereabouts and that the respondent is not the biological father of CKM. PW2 was Ruth Wangechi Njoki who testified that she knows both the appellant and the respondent and that they got married in 2018. That even though CKM was not the respondent's biological child, he treated him as such and the child knew him as his father. PW3 was Kellen Gakii Ndiga, the appellant's friend, who stated that she attended the traditional wedding of the appellant and the respondent in 2018 and the 2 lived together as husband and wife.
  5. DW1, the respondent, stated that the appellant is his wife but they are presently separated. That at the time they got married, the appellant had a child CKM and that he has been providing for the child except school expenses which the appellant was paying as per their agreement. He stated that he was ready to share the responsibility of the upkeep demanded by the appellant in the plaint upto Kshs. 10,000/= per month. That he was willing to continue paying the same amount as maintenance for KUM, his biological child.
  6. In his decision, the trial magistrate relied on sections 23(1) and (2)(a) and 24(2) of the Children Act, 2001 and the case of SKM v. MWI (2015) eKLR and determined that the respondent owes parental responsibility to KUM even though he is not his biological child and that both the appellant and the respondent are to share parental responsibility equally. The court also ordered that the appellant shall provide for custody and food for the 2 children and both parents shall provide for medical expense at the ratio of 50%:50% as they emerge. The respondent was ordered to pay Kshs. 20,000/= monthly towards education expenses for both children.
  7. The appeal was unopposed and the court directed that the parties file their written submissions. Only the appellant complied. In her submissions, she stated that the trial magistrate ordered that the parental responsibility be shared but was not clear on the amount of contribution. That the respondent has not been catering for the medical expenses and clothing, arguing that the same was not ordered by court. She submitted that the respondent has been paying Kshs. 20,000/= towards education expenses for both children. That the amount to be borne by each party for parental responsibility should be specified.
  8. The question for determination herein is whether this appeal has merit and if the order sought should be granted.
  9. The case herein concerns minors whose rights are enumerated under Article 53(1)(e) and (2) of the Constitution of Kenya 2010 as follows:

“ Article 53(1)(e) Every child has the right 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 Article 53(2) A child's best interests are of paramount importance in every matter concerning the child.”



10. On the same note, Sections 30-36 (Part III) of the *Children Act* No. 29 of 2022 provide for parental responsibility. Section 31 of the same *Act* defines parental responsibility and provides thus:
1. In this *Act*, "parental responsibility" means all the duties, rights, powers, responsibilities and authority which by law a parent of a child has in relation to the child and the child's property in a manner consistent with the evolving capacities of the child.
  2. The duties referred to in subsection (1) include, but are not limited to—
    - a. the duty to maintain the child and, in particular, to provide the child with—
      - (i) basic nutrition;
      - (ii) shelter;
      - (iii) water and sanitation facilities;
      - (iv) clothing;
      - (v) medical care, including immunization;
      - (vi) basic education; and
      - (vii) general guidance, social conduct and moral values;
    - b. the duty to protect the child from neglect, abuse, discrimination or other differential treatment;
    - c. the duty to—
      - (i) provide parental guidance in religious, moral, social, cultural and other values that are not harmful to the child;
      - (ii) determine the name of the child;
      - (iii) procure registration of the birth of his or her child;
      - (iv) appoint a legal guardian in respect of the child;
      - (v) receive, recover and otherwise deal with the property of the child for the benefit, and in the best interests, of the child;
      - (vi) facilitate or restrict the migration of the child from or within Kenya;
      - (vii) upon the death of the child, to arrange for the burial, cremation of the child or any other acceptable method of interment; and
    - d. the duty to ensure that, during the temporary absence of the parent or guardian, the child shall be committed to the care of a fit person.
  3. Whether or not a person has parental responsibility over a child shall not affect—
    - a. any obligation which such person may have in relation to the child, such as a statutory duty to maintain the child; or
    - b. any rights which, in the event of the child's death, such person may have in relation to the administration of the child's estate in accordance with the *Law of Succession Act* (Cap. 160).



4. A person who does not have parental responsibility over a particular child, but has care and control over the child, may, subject to the provisions of this Act, do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child's welfare.
11. Ideally, parental responsibility is not defined in terms of money or financial contribution paid by one parent to another. Rather, it is a duty to be discharged by both parents to cater for the needs of a child, financial or otherwise as stated in the *Act*. It is obvious that education, medical expenses, clothes and all the basic needs of the child are payable with money. In this appeal, the appellant seeks that this court defines the amount of money each parent should pay as "parental responsibility". The trial magistrate gave orders that:
  - a. The defendant has parental responsibility for the 1<sup>st</sup> child KUM;
  - b. Both parents to share parental responsibility for the 2 children;
  - c. The plaintiff mother to provide for custody and food for the 2 children;
  - d. The plaintiff and the defendant to provide medical expenses at the ratio of 50%:50% as and when they emerge; and
  - e. The defendant to pay Kshs. 20,000/= per month to cater for the education of both children.
12. In her submissions, the appellant has conceded that the respondent has been paying the Kshs. 20,000/= going towards the children's education expenses. Section 31(2)(a) of the *Children Act* as stated hereinabove provides for some of the basic needs to be provided by both parents under the meaning of parental responsibility. The trial magistrate apportioned these needs to both parents, in the interest of the children. In my view the apportionment of responsibilities is fair and just. From the trial record, I think that the trial magistrate factored in all the aspects that would encompass the best interest of the children. The other aspect of parental responsibility would be custody of the children but the same did not arise as an issue at trial and so this court will not address it. The trial magistrate rightly explained the respondent's role and responsibility to both children and there is no need for me to delve into that too.
13. The orders of the trial magistrate are sufficient to fulfill the interests of the minors. For this reason, I find that the appeal lacks merit and is hereby dismissed.
14. It is so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 14<sup>TH</sup> DAY OF FEBRUARY, 2024.**

**L. NJUGUNA**

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**JUDGE**

