



**FMV v LNM (Miscellaneous Civil Application 9 of 2024)  
[2024] KEHC 2574 (KLR) (13 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2574 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
MISCELLANEOUS CIVIL APPLICATION 9 OF 2024**

**PJO OTIENO, J  
MARCH 13, 2024**

**BETWEEN**

**FMV ..... APPLICANT**

**AND**

**LNM ..... RESPONDENT**

**RULING**

1. Pursuant to prayer 4 in the Notice of Motion dated 7.2.2024 and the interim orders issued by the Court on the 8/2/2024, the trial Court file has been placed before the Court for perusal pursuant the jurisdiction of the Court vested by article 165 (6) & (7).
2. In exercising that jurisdiction, the Court purposes to establish and ensure that justice has been served on the parties fairly. In the current matter, the complaint by the Applicant is that when he appeared before the Court on 29/1/2024 for Mention, no purpose was disclosed for that Mention, the Respondent here, as Plaintiff at trial, complained that the Applicant had not returned the children. In response the Applicant responded that the Respondent had not come for the children which prompted him to seek help from her father who told him to stay with the children.
3. The proceedings in the Court file reads:

“ 29/1/2024

Before Hon. C. J. Cheruiyot, RM

CA: Lucy

Plaintiff – P.I.P

Defendant – P.I.P

Plaintiff: The Defendant has not returned the children.



Defendant: The Plaintiff did not come for the children. I asked her father for help he told me to stay with them.

Court: The Defendant is in contempt of the court Order issued on 14/7/2023 and has willingly disobeyed the said orders. I hereby punish the contemnor to civil jail for a period of fourteen (14) days.”

4. On perusing the record of the trial court, the Court notes there are no orders in the Court file issued on 14.7.2023. The orders issued most proximate to that date were those of 13.7.2023. Those orders did grant interim custody to the mother of the children.
5. However, subsequent proceedings before the trial Court demonstrate that there was contact/communication between the parties with confirmation on the 30.8.2023 that the Applicant had sent to the Respondent a sum of Kshs 300/=.
6. The next time the matter was in court, the Court recorded that it had contacted the school and confirmed that the Applicant had paid school fees. On that basis the applicant was directed to pay maintenance ordered on 14/8/2023. It was additionally ordered that the Claimant serves Summons upon the Respondent for hearing on an appointed date. That order was complied with but the defense filed had not been served upon the plaintiff hence on 15.01.2024 the Court ordered that the plaintiff takes a copy from the Court file and matter was fixed for Mention on 29.01.2024.
7. Come the Mention day, the Court records that the Claimant complained that the Defendant had not returned the children to which charge the Respondent replied that the Claimant did not go for the children and when he asked her father for assistance, the father told him to stay with the children.
8. With such a short address by the parties, the Court found the Defendant in contempt of the orders issued on 14.7.2023 and sentenced the Applicant to serve a jail term of fourteen (14) days.
9. It is that order which has proved the current request for revision.
10. The Court notes that there is no indication on when the children landed in custody of the Applicant just as it notes that when parents fight, it may be the best interest of the child that suffers. The Court notes that the matter is yet to be heard and yet the timelines for concluding the matter continues to run.
11. Contempt is criminal in nature and the law demands that a convicted person be given a chance to mitigate. The record does not show that the applicant got a chance to mitigate.
12. That lapse and the need to conclude the matter expeditiously in the interest of the child demands that the conviction and sentence be quashed and set aside. It is so quashed and sentence imposed set aside.
13. It is directed that the matter be placed before the Chief Magistrate for his allocation and directions on how to progress the matter with the best interest of the child being protected and observed.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA, THIS 13<sup>TH</sup> DAY OF MARCH, 2024.**

**PATRICK J. O. OTIENO**

**JUDGE**

**In the presence of:**

Mr. Mbaka for the Applicant

No appearance for the Respondent

Court Assistant: Polycap

