



GLS & DKS (Minors Suing Through their Mother AWK) v JS (Children's Appeal Case E009 of 2022) [2024] KEHC 2487 (KLR) (8 March 2024) (Ruling)

Neutral citation: [2024] KEHC 2487 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CHILDREN'S APPEAL CASE E009 OF 2022**

HM NYAGA, J

MARCH 8, 2024

BETWEEN

GLS & DKS (MINORS SUING THROUGH THEIR MOTHER AWK) APPELLANT

AND

JS RESPONDENT

RULING

1. Before me is an Application dated 11th December, 2023 seeking the following prayers;
 - a. This Application be certified urgent and be heard ex-parte in the first instance.
 - b. Pending hearing and determination of this Application and further orders of the court, this Honourable court be pleased to order that GLS and DKS be produced in court at the earliest date to be handed over to the Applicant.
 - c. This court be pleased to cite the Respondent Jesse Selempo for contempt for Court Orders issued on 23rd October, 2023 and fine him Kshs. 200,000/= or to have him committed to civil jail for a period of 6 months or to both;
 - d. Pending hearing and determination of the Appeal herein, this Court be pleased to vary the Orders dated 25th July, 2023 as well as those issued on 23rd October, 2023 and grant the Appellant sole actual custody of GLS and DKS.
 - e. This court be pleased to fix the Appeal for hearing on prior basis.
 - f. Cost of this Application be catered for by the Respondent.
2. The Application is propped by the grounds set out on the face of it and is supported by the Affidavit of Anne Wambui Kamau.



3. In a nutshell, the Applicant states that the Respondent has yet again, disregarded the orders of the court issued on 23rd October, 2023. That the orders, which were issued in the presence of both parties, were clear and unambiguous. That the Respondent's conduct is deliberate and there is no plausible reason why he has not complied with the orders of the court. That repeated defiance of court orders is an affront to the rule of law and impairs the fair and efficient administration of justice.
4. The Applicant further states that in compliance with the court's directives on access of both subjects by the parties, she peacefully handed DKS to the Respondent so that he could have access for the period set by the Court. That on 1st December 2023 she travelled to Ngong to pick both DKS and GLS. The Respondent frustrated her, by not picking her calls and then changing the pick-up point. That when the Respondent eventually availed the children, he only allowed her to see them before he asked them to get into his car. That her pleas to have the children went unheeded. That she sought the intervention of the children office, Ngong and was advised to come back to court.
5. The Applicant states that this is the 4th time that the Respondent has openly defied court orders.
6. The Respondent opposed the Application vide an Affidavit sworn on 18th December, 2023.
7. The Respondent averred that on the day fixed for handing over the subjects, he drove to Ngong Town and went to the Applicant's preferred pick up point. That the Applicant insisted that the pickup be done inside the bus terminal/part but he did not find it suitable. That when the Applicant finally went to the place he had parked his car, the children came out and greeted the Applicant. That when it came time for him to leave, they went into the car and locked themselves inside. That despite pleading with them, they refused to leave with the Applicant.
8. The Respondent further states that as they were duly advised, after the incident, he drove with the children to Nakuru on 4th December 2023. That he wrote a letter to court to explain what had transpired.
9. The Respondent avers that the issue was not of his making and asks the court to interview the minors.
10. For the applicant, it was submitted that the respondent has continued to defy one court order after another, on dates that she cited. She also pointed out that she has been arrested at the behest of the respondent on allegations that she had failed to comply with court orders, and her children were violently taken away. That it has taken time and effort to re-integrate DKS in the course of the matter as her financial resources are not as extravagant as those of the respondent.
11. On the law on contempt, the applicant cited the case of *James Wahome Ndegwa v Zachary Mwangi Njeru And 8 Others* [2021] eKLR.
12. The applicant also cited a Ruling in this case as well as Nakuru Children Appeal No. 7 of 2019 *EWT v EMT*.
13. For the respondent, it is submitted that the applicant is conniving and mischievous and has continuously given false information to the court. The respondent also referred to the decision in *I.O. v S.A.O.* [2016] eKLR as well as other cases which in my view were geared towards the appeal itself rather than the application before me.
14. Before I move into making an analysis of the matter before me, it is important to note that the parties had been to the children court vide Nakuru Children Case No. 76 of 2016. At the end of the trial, the Court granted physical custody of DKS to the Applicant while the Respondent was granted physical custody of GLS. The court granted legal custody of both minors to both parties.



15. During the taking of directions on the Appeal, I gave directions on 23rd October, 2023 as follows;
 - a. The Respondent was to stay with both children from 27th October 2023 to 1st December 2023.
 - b. The Appellant was to stay with both children from 1st December 2023 to 5th January 2024, subject to confirmation of the school opening dates in January, 2024.
16. The first part of the order proceeded with no major issues as the Respondent was able to take DKS and went to stay with him.
17. The problem arose when it came to the implementation of part (b) of the orders of 23rd October 2023.
18. As has been the situation in this case, the parties are accusing each other for the failure to implement the second limb of the order in question.
19. From the averments by the parties, it is very apparent that they are trying to outdo each other in front of their own children.
20. The Respondent is using his apparent financial advantage to woo the subjects to his side, while the Applicant has been left to her own designs, playing the emotional card. They think that this case is just a show.
21. What is clear is that in on the material day, the parties decided to play out their respective roles in their own show oblivious to the effects that they had on their own children.
22. The truth be said. These are not parties that can sit and agree on anything, even the most obvious.
23. The court record shows that even during the trial in the lower court, the parties had issues to raise against each other. They have dug into their respective positions, unwilling to yield at all.
24. Having looked at the matter, I am unable to clearly point to the Respondent as having to take the blame for what transpired. There are accusations against the Applicant herself. In such circumstances, I think that it would be difficult to hold the Respondent in contempt of court orders. He was not expected to throw the subjects at the Applicant like they were objects. What transpired on that day, to me, is attributable to the hard-line stances that both parties have assumed.
25. Having stated the above, the Respondent is said to have enrolled the younger child to a school in Kajiado. To my re-collection, there was no order that he does so. Even if he meant well for the subject, his actions are not in sync with the orders of the court. For this, he must be held accountable. He could not just opt to enrol the child in school without leave of the court.
26. Therefore, as matters stand, the Respondent must hand over DKS to the Applicant in compliance with the court orders. I know that it may look unfair but it is what it is. He has not sought to review the orders of the court on custody.
27. Consequently, I direct that the Respondent proceeds to hand over the younger subject to the Respondent forthwith, failing which, he shall be in contempt of the existing court orders and will definitely face the legal consequences thereof.
28. I will give a mention date for compliance.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 8TH DAY OF MARCH, 2024.

H. M. NYAGA,

JUDGE.



In the presence of;

C/A Oleperon

Ms Sabaya for Applicant

No appearance for Respondent

