



REPUBLIC OF KENYA



**Masese v Nyarenchi (Civil Appeal E058 of 2023)
[2024] KEHC 8320 (KLR) (11 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8320 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
CIVIL APPEAL E058 OF 2023
WA OKWANY, J
JULY 11, 2024**

BETWEEN

ROBINSON MASESE APPLICANT

AND

BRENDA MORAA NYARENCHI RESPONDENT

RULING

1. This ruling is in respect to the Application dated 5th February 2024 wherein the Applicant seeks the following orders: -
 1. Spent
 2. That pending the hearing and determination of the Application herein, the High Court stays all proceedings in the lower court, specifically Nyamira Chief Magistrates Children’s Case No. E026 of 2022 be suspended.
 3. That pending the hearing and determination of the Application herein, all warrants of arrest and or warrants of execution issued in Nyamira Chief Magistrates Children’s Case No. E026 of 2022 be suspended.
 4. That pending the hearing and determination of this Application, an Order for DNA be conducted on all the minors as per the orders in Nyamira Chief Magistrate’s Children Case No. E026 of 2022.
 5. Any other orders the honourable court see fit to grant in its decision.
2. The Application is brought under Articles 53 and 149 of the *Constitution*, Sections 1A, 1B and 3A of the *Civil Procedure Act* and Order 51 of the *Civil Procedure Rules*.
3. The Application is supported by the Applicant’s affidavit and is premised on the following grounds: -



1. That there is a pending Appeal before the High Court Nyamira HCCA No. E058 of 2023 which is yet to be heard and determined.
2. That Nyamira Chief Magistrates Children's Case No. E026 of 2022 touches on the same subject matter as this Appeal and as such, two matters touching on the same matter are proceeding concurrently.
3. That the Applicant shall continue to comply with previous High Court Orders issued by this Honourable Court on 21st December 2023.
4. That despite the lower court issuing an order for DNA test, the Respondent in this case did not comply with the Order.
4. The Respondent opposed the Application through her Replying Affidavit dated 20th April 2024 wherein she states that the Applicant did not comply with the Court Orders directing him to continue providing school fees and maintenance for the minors thereby precipitating the issuance of a warrant of arrest against him. She further states that there is no pending matter before the lower court as the last Application was dismissed on 18th April 2024 and the file closed. She adds that the Applicant refused to pay the minor's school fees and had gone into hiding thereby frustrating the execution of the warrants of arrest. She further faults the Applicant for failing to turn up for the DNA tests on three occasions thus frustrating the Respondent and subjecting the children to prejudice after he failed to pay their school fees.
5. The Applicant filed a Supplementary Affidavit dated 24th May 2024 wherein he avers that he will suffer irreparable harm if the warrant of arrest is executed as he will not get the opportunity to prosecute his appeal which raises triable issues. He explains that the DNA test was not conducted due to lack of financial resources and that he lives in constant fear of being arrested. The Applicant states that it is in the interests of justice that the warrants of arrest be lifted.
6. The Application was canvassed by way of written submissions which I have considered.
7. The main issue for my determination is whether the Application is merited.
8. Article 53 (2) of the *Constitution* stipulates as follows: -
 - (2) A child's best interests are of paramount importance in every matter concerning the child.
9. The *Childrens' Act* Cap 141 at Section 4 provides thus: -
 - (2) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
10. The instant application relates to the issuance of warrants of arrest against the Applicant on account of his failure to honour the conditions of stay directing him pay school fees and upkeep for his minor children. On 21st December 2023, the court granted orders for stay of execution on condition that the Applicant continues to provide for the minors and ensures that they go to school in the new year, failure of which the execution was to proceed. I will therefore only consider the merits of this Application in light of the evidence placed before me, the circumstances of the case and ultimately, the best interests of the minors.
11. The Applicant has attached the following documents to his affidavit in support of the application:-
 1. Letters of commitment to pay school fees (RM 2,3 &4);



2. School fees receipts (RM7,8 & 9);
 3. M-Pesa statements (RM5; and
 4. Screenshots of M-Pesa transactions to the Respondent's Counsel (RM6)
12. A perusal of the said documents reveals that indeed, the Applicant sent Kshs. 8,000/= to the Respondent's counsel. He also presented school fees receipts in respect to the four children. I note that the trial court in Nyamira Chief Magistrates Children's Case No. E026 of 2022 directed the Applicant to pay up to three quarters of the minor's school fees while the Respondent caters for the remaining quarter. This means that the Respondent herein was to contribute in paying the school fees.
 13. I however note that the Respondent did not tender any evidence to show that she paid her part of the school fees. I have also considered the fact that the Applicant involved his mother (Jemima Nyamwanda) to assist him in catering for the school fees and transport for the minors as shown in the commitment letters sent to the school. In my considered view, this shows that there is good faith on the part of the Applicant as demonstrated in his willingness to comply with the court's orders.
 14. I find that the Applicant's apprehension of the impending arrest through the warrants of arrest orders is justified. In view of the fact that the Applicant has shown willingness to cater for the minor's financial needs, I find it would be against the interest of justice to deny him an opportunity to freely go to work and earn a living to support his children.
 15. I find that the warrant of arrest issued by the trial court will essentially deprive the minors of an opportunity to go to school if their father is arrested. I therefore order that the same be lifted and that the Applicant be allowed to find suitable work for gain. I further direct that the parties herein to file a comprehensive school fees statement and fee structure from the minors' schools together with evidence of all the payments made to the school from the commencement of the year to the date of this Ruling. The Applicant is hereby ordered to settle any outstanding school fees forthwith.
 16. In sum, I find that the instant Application has merit and I therefore allow it with no orders as to costs.
 17. It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS AT NYAMIRA THIS 11TH DAY OF JULY 2024.

W.A. OKWANY

JUDGE

