



**TA v SC (Family Appeal E029 of 2024) [2024] KEHC 8932 (KLR) (Family) (25 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8932 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
FAMILY APPEAL E029 OF 2024  
HK CHEMITEI, J  
JULY 25, 2024**

**BETWEEN**

**TA ..... APPLICANT**

**AND**

**SC ..... RESPONDENT**

**RULING**

1. The Notice of Motion application herein is dated 11<sup>th</sup> April 2024 seeking for orders that:-
  - (a) Spent
  - (b) There be stay of execution of the ruling delivered on the 15<sup>th</sup> day of March 2024 in case NO MCCHCC/1153 of 2023 at the Milimani law courts Nairobi pending the determination of the appeal lodged by the Appellant.
2. The application is based on the grounds thereof as well as the supporting affidavit of the Applicant sworn on the same date.
3. The gist of the application is that the trial court directed the Applicant through a notice to show cause to pay to the Respondent in compliance with the courts decree a sum of Kshs. 442,000 by equal monthly instalments of Kshs. 73,666. The said amount was to be paid in six equal instalments with effect from April 2024. In default the Applicant was to be arrested.
4. The Applicant was dissatisfied with the said ruling and filed this appeal and contemporaneously filed this application seeking stay of the said orders pending the appeal.
5. The substratum of the application are twofold, that first of all it was the Respondent who stopped him from making the monthly remittances as had been directed by the court through her WhatsApp messaging.



6. Secondly that he had provided for the minor an insurance policy which as at the time of making this application had in excess of Kshs. 1,000,000 premium. The said policy in effect ought to have been considered by the court as part of the monthly remittance and thus a compliance of the court order.
7. That to proceed to effect the order would mean a double jeopardy against the Applicant as far as the minors education was concerned. He consequently prays that this court should grant a stay pending the determination of the appeal as the delay in fulfilling the trials court orders was partially due to the Respondent.
8. The Respondent has opposed the application siding with the findings of the trial court. She accused the Applicant of acting in completely bad faith and that the language which he understood was that of forceful execution of the orders.
9. He also accused him of reneging in paying the amount due which necessitated her to make the application to order compliance.
10. That the Applicant was a person of means with successful medical practice exemplified by the vehicles he drives as well as living in the leafy suburbs of (particulars withheld). She therefore deponed that the application ought to be disallowed considering the best interest of the child.
11. The court directed the parties to file written submissions which they have complied. The court has perused the same and they both gravitate around the principles underpinned by Order 42 of the Civil Procedure Rules, namely whether the Applicant shall suffer substantial loss should the application be denied; has been made without undue delay, whether security for costs shall be necessary and of course in this case the best interest of the child.
12. I have perused the court's ruling and I think the issue herein is whether the Applicant ought to pay the arrears as directed by the trial court. The Applicant is not denying in my view that he had not fully complied but that he stopped making the payments when the Respondent wrote to him that he ought to stop.
13. I have perused the Annexure TA1 of the affidavit by the Applicant and she stated in the message that she had had discussions with her husband and agreed that the Applicant could make visitations but on the issue of payments she and her husband "shall be fully responsible".
14. This is a weighty issue which shall be taken during the appeal. For now, however it appears that that was one of the motivation by the Applicant that caused him to stop the remittance.
15. The second issue is the education insurance policy which he had taken for the minor. As at April 2024 the total monthly premium amounted to Kshs. 982,340 in total remitted to the insurer. According to the Applicant the same ought to be taken into consideration, something which the trial court failed to consider.

### **Analysis and Determination.**

16. I have anxiously taken consideration of the issues raised herein and noting that the main appeal was pending. The weighty issues for now may take a backstage and making such orders which shall ensure that the minor's life and education is not interrupted.
17. It is true that the Applicant was in arrears but I find the monthly premium remittances to the insurance policy a mitigating factor. The amount or the policy is for the future benefit of the minor. Although he may not benefit now the future is nevertheless secure at least in her academic life.



18. To demand full payments for the minor's education and at the same time continue with the insurance policy *prima facie* is not fair to the Applicant.
19. Even for argument sake the arrears of Kshs. 442,000 could easily be subsumed under the education policy which is in excess of Kshs. 1,000,000.
20. Since this issue of arrears is the subject of appeal I find that the best way to deal with at this level is to take it that the said arrears forms part of the remittance to the insurance company. The Applicant ought therefore to continue from the date herein to remit the instalments to the insurance company as well as pay the current educational requirements as directed by the trial court.
21. In other words, and for avoidance of doubt while the appeal is pending any compliance with the minor's education in furtherance of the trials court order moving forward from the date of this ruling and pending the determination of the appeal shall have the premium paid towards the policy deducted as failure to do so shall be construed as double payments.
22. I think the other parts of the trials court decree shall continue to be honoured by the parties as directed pending the determination of the appeal.
23. In the premises the application is allowed as follows:-
  - (a) The trials court ruling dated 15<sup>th</sup> March 2024 pending the hearing and determination of this appeal is hereby stayed as regards payment of arrears.
  - (b) The monthly amount of premium remitted by the Applicant towards the Education insurance policy of the minor shall form part of the Applicant's contribution towards meeting her education needs and the same shall be reckoned as the case might be.
  - (c) In the event that there is any differences then the Applicant shall meet the said shortfall as directed by the trial court.
  - (d) The above prayer(b) shall take effect from 30<sup>th</sup> August 2024 till the finalisation of this appeal or until further orders of this court.
  - (d) Costs shall be in the cause.

**DATED SIGNED AND DELIVERED VIA VIDEO LINK THIS 25<sup>TH</sup> DAY OF JULY, 2024.**

**H K CHEMITEI**

**JUDGE**

