



**MNN v JMM (Miscellaneous Application E024 of 2021)
[2023] KEHC 17634 (KLR) (Family) (5 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 17634 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

MISCELLANEOUS APPLICATION E024 OF 2021

MA ODERO, J

MAY 5, 2023

IN THE MATTER OF MM (MINOR)

BETWEEN

MNN APPLICANT

AND

JMM RESPONDENT

RULING

1. Before this Court is the Notice for Motion Application dated October 3, 2022 by which the Applicant MNN seeks the following orders:-
 1. Spent.
 2. That this honourable court be pleased to grant leave to the applicant to institute contempt of court proceedings against JMM .
 3. That this honourable court be pleased to find that JMM is in further contempt of the Orders of March 5, 2021.
 4. That this honourable court be pleased to issue an order of sequestration for the real and personal property of JMM to the full satisfaction of the sum of Kshs 387,546/= being the balance of his share of the minor’s fees and the accrued penalties from March 5, 2021 to April Term 2022 fees due to the minor’s school, The [Particulars Withheld] Academy for the contempt of this honourable court in failing to pay the same.
 5. That this court imposes a fine on JMM and or any other punishment permitted under the law.
 6. That the cost of this Application be provided for.”



2. The application which was premised upon Section 8 of the *Judicature Act*, Cap 8 Laws of Kenya Part 81 of the *Civil Procedure (Amendment) Rules of England* Section 3, 3A, 63 of the *Civil Procedure Act*, Cap 21, Laws of Kenya, Article 159 (2) (a) of the *Constitution of Kenya* and all other enabling provisions of the was supported by the Affidavit of even date sworn by the Applicant.
3. The Respondent JMM opposed the application through the Replying Affidavit dated November 8, 2022 and the Further Affidavit dated January 31, 2023 both sworn by the Respondent.
4. The matter was canvassed by way of written submissions. The Applicant filed the written submissions dated January 5, 2023 whilst the Respondent relied upon his written submissions dated January 31, 2023.

Background

5. The Applicant and the Respondent are the biological parents of the subject minor MM The parties have been engaged in numerous legal battles both in the Children’s Court and in the High Court on matters relating to the maintenance and upkeep of the minor.
6. The Applicant avers that on March 5, 2021 this court made orders that the minor remains enrolled at the [Particulars withheld] Academy and directed that both parents provide for fifty per cent (50%) of the school fees. This order was to remain in force pending determination of the application dated February 15, 2021.
7. The Applicant stated that despite having been properly served with the order of the court and therefore having notice of the same the Respondent has failed to comply forcing the Applicant to borrow money in order to pay the Respondent’s portion of the minor’s school fees.
8. According to the Applicant she made the payment required of her in accordance with the court’s orders. That however the Respondent despite several reminders to comply only made part payment of his share of the school fees leaving an outstanding balance of Kshs 322,865. That due to the failure by the Respondent to settle the fees required in full the school imposed a surcharge on the arrears of Kshs 64,682 as at July 5, 2022.
9. The Applicant states that she is currently providing for all the other needs of the minor and is not in a position to cater for the entire amounts of the school fees. That due to the Respondent’s failure/refusal to comply with the orders of the court the school has denied the minor his Report card for the April Term 2023. Additionally the school has denied the minor admission for the September 2022 term on account of the fees arrears now amounting to Kshs 606,365/=.
10. The Applicant insists that the Respondent is a man of means and is fully capable of paying the child’s school fees. She points out that vide a ruling delivered on March 11, 2022, the Respondent was found to be in contempt of court orders and was fined Kshs 100,000.
11. The Applicant states that in view of the fact that the Respondent is an adjudged contemnor who still persists in disobeying court orders, the court ought to move urgently in order to protect the minor’s best interest and his right to education. She prays that the present application be allowed as prayed.
12. The Respondent on his part opposed the application. The Respondent denies that he has disobeyed the court’s orders and he further denies that there is any outstanding arrears in respect of the minor’s school fees.
13. The Respondent states that in compliance with the court’s orders he paid an initial sum of Kshs 15,000/= out of the Kshs 300,000/= apportioned to him to pay. That on March 17, 2022 he paid Kshs



550,000 to the school. Thereafter on April 6, 2022 he paid a further Kshs 300,000/= and again on May 25, 2022 he paid Kshs 168,000 towards the minor's school fees. The Respondent asserts that he is not in any arrears regarding his fifty per cent (50%) share of the minor's school fees.

14. The Respondent further states that the ruling on the main application dated February 15, 2021 was delivered on May 27, 2022. In the circumstances therefore the interim orders made on March 5, 2021 have now lapsed.
15. The Respondent states that this application has been brought in bad faith as the Applicant and her Advocates are fully aware of the payments which he has made to the school. The Respondent asserts that he has fully complied with the court's orders and urges the court to dismiss this application in its entirety.

Analysis and Determination

16. I have carefully considered the application before this court, the reply filed by the Respondent as well as the written submissions filed by both parties.
17. The Applicant filed an application dated February 15, 2021 seeking various orders. On March 1, 2021 the court directed the parties to hold discussions with a view to reaching an agreement regarding payment of the minor's school fees.
18. On March 5, 2021 the parties returned to court and the Advocates for both parties informed the court that they were not able to reach any agreement on the issue of payment of school fees. The Applicant insisted that the child remain at his current school [Particulars Withheld] Academy which follows the British Curriculum whilst the Respondent favoured transferring the child to a public school which in his view was more affordable.
19. The court observed that it would not serve the best interest of the child to transfer him to a new school while the main application was still pending. As such the court made interim orders for the child to remain at the [Particulars Withheld] Academy and directed that each parent cater for half of the school fees.
20. On April 24, 2021 the Applicant filed an application seeking to institute contempt proceedings against the Respondent for failure to pay half of the required school fees. Vide a Ruling delivered on September 2, 2021, the court reiterated that it was not in the best interest of the minor to transfer him from a British Curriculum school to the 8-4-4 system of education while the matter was still pending determination before the Children's Court. The court directed the Respondent to comply with the orders of March 5, 2021. The parties were advised to set aside their own personal egos to embrace dialogue and reach a consensus in the best interest of their child.
21. However when the parties returned to court on March 11, 2022 no consensus had been reached. The court found the Respondent to have been in contempt and fined him Kshs 100,000 which fine the Respondent paid.
22. I have perused the annexures presented by the Respondent as evidence that he has paid in full the half share of the school fees which he was directed to pay (Annexures 'JMM-5' and 'JMM-6'). The Respondent stated that these documents had been shared with counsel for the Applicant.
23. From the documents available the Respondent paid Kshs 50,000/= to the school on March 17, 2022 and paid Kshs 300,000 on May 6, 2022. The school fees balance as at April 2022 was therefore Kshs 336,443/=.



24. The Respondent then paid Kshs 168, 300 on May 25, 2022. The arrears left amounted to Kshs 168,143/= which the Respondent contends ought to be paid by the Applicant in terms of the orders of March 5, 2021.

25. The main Motion dated February 15, 2021 was then canvassed by both parties and in a Ruling delivered on May 27, 2022 the court dismissed that application in its entirety. In dismissing the said application the court held (inter alia) as follows:-

“The Applicant claims that the magistrates orders of stay mitigate against the best interest of the child as the trial will be delayed. I note that interim orders were made in the lower court to cater for the child’s education and upkeep pending the hearing and determination of the main suit. It is the Applicant herself who sought leave to Appeal. Moreover, it is clear that the applicant’s move was a petty one given that the Kshs 75,000/= had already been paid. In my view, the Applicant herself is allowing her hatred for the Respondent to cloud the overriding issue being the welfare of the child. Seeking to have a person jailed when the debt has already been paid is not a bona fide action. The Applicant seems more determined to have the Respondent jailed than to conclude a case that she herself filed. I find that in filing this application instead of seeking a review in the lower court and/or pursuing her intended appeal the applicant is herself prolonging the case.

26. Upon delivery of the Ruling of May 27, 2022 the interim orders made on March 5, 2021 automatically lapsed and this court became ‘functus officio’

27. In order to punish the Respondent for contempt it must be shown that he did not pay his half of the school fees as required.

28. When the school term started in January 2022, the fees arrears was Kshs 407,981/=. The term fee was Kshs 734,481/=. The total school fees payable as of March 5, 2022 when the order was made was Kshs 1,142,462/=. Both parties were to pay half of this entire amount. It is unclear from the record, who paid how much from the month of January 2022 to April 2022 when the term closed. It is also unclear how much school fees was to be paid by May 27, 2022 when this court became ‘functus officio’.

29. Once again I caution parties herein from rushing to court over matters which they as mature adults can sit and resolve together with their Advocates. I direct the parties to sit with their Advocates and compute the total amount of school fees and any surcharges payable upto March 27, 2022 when the orders made on March 5, 2021 lapsed.

30. Finally I find no merit in the present application. The same is dismissed in its entirety. Each side to bear its own costs.

DATED IN NAIROBI THIS 5TH DAY OF MAY, 2023.

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MAUREEN A. ODERO

JUDGE

