



Chelangat v Bett (Appeal E005 of 2020) [2023] KEHC 19110 (KLR) (15 June 2023) (Ruling)

Neutral citation: [2023] KEHC 19110 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
APPEAL E005 OF 2020**

JK SERGON, J

JUNE 15, 2023

BETWEEN

BEATRICE CHELANGAT APPELLANT

AND

KIPKORIR BETT RESPONDENT

RULING

1. The gist of the matter at hand is a child maintenance and custody suit filed in the Children’s Court at Kericho vide Children Case Number 37 of 2015. The court rendered itself in a judgment dated May 19, 2020. The Respondent herein being dissatisfied with the judgment in its entirety sought to lodge an appeal.
2. The Respondent lodged his appeal albeit out of time, this court vide a ruling dated November 5, 2021 allowed the application to file the appeal out of time, declined to issue a stay of execution and ordered that the Respondent continue to pay Kshs 15,000/= per month for child maintenance and also to comply with all the orders made in Kericho Chief Magistrate’s Children’s Case No 37 of 2015 in the judgment dated May 19, 2020 pending hearing and determination of the appeal.
3. The Respondent failed, refused and/or declined to abide with the said orders and decrees. The Applicant therefore filed an application dated July 15, 2022 to compel the Respondent to pay the outstanding contributions and the court rendered itself on August 1, 2022, however, the Respondent continues to be in default thereby precipitating the instant application for salary attachment.
4. The application coming up for the court’s determination is the notice of motion dated February 27, 2023 seeking the following orders;
 - i. Spent
 - ii. That this Honourable Court be pleased to attach the Appellant’s salary to the tune of Kshs 90,000/= being arrears and Kshs 15,000/= per month to cater for school fees and other school



requirements to be remitted to Account Number 01109060871600, Account Name Beatrice Chelangat At Co-operative Bank-kericho Branch.

- iii. That the Appellant's personal service number is 73676, 17 Battalion at Ministry of Defence – Kenya Defence Force.
 - iv. That the costs of this Application be provided for.
5. The Application is supported by grounds on the face of it and the supporting affidavit of Beatrice Chelangat, the Applicant herein.
 6. The Applicant avers that Respondent herein is the biological father of two issues namely EK aged 13 years and MK aged 4 years.
 7. The Applicant avers that vide a court order dated August 1, 2022 the court made orders that the Respondent ought to pay Kshs 15,000/= outstanding monthly contribution pending inter-partes hearing, annexed hereto and marked "BC 1" is a copy of the court order.
 8. The Applicant avers that the Respondent was duly served with the court order, annexed and marked "BC 2 a and b" are copies of the notice and affidavit of service, and despite service of the said court order, the Respondent reneged and/or neglected to comply with the court order.
 9. The Applicant further avers that she has been struggling alone to provide for the issues of the marriage without the assistance of the Respondent and on several occasions the Respondent has promised to provide for the issues of marriage but to no avail. The Respondent is a Kenya Defence Forces (KDF) Officer and is therefore able to provide for the issues herein, furthermore, his employer acknowledges receipt of the court order, annexed and marked "BC 3" are copies of the correspondences.
 10. The Respondent opposed the application dated February 27, 2023 and filed grounds of opposition citing that the application was mala fide, fatally defective, frivolous, vexatious and a flagrant abuse of the court process.
 11. The matter was set for inter-partes hearing on May 25, 2023, hearing notice issued, the hearing notice was served upon the Respondent's counsel and an affidavit of service filed.
 12. On May 25, 2023 the matter came up for inter-partes hearing, counsel for the Applicant was present and urged the court to allow the application dated February 27, 2023 whereas counsel for the Respondent was not present in court.
 13. I have considered the application for attachment of salary, the facts deponed in the supporting affidavit and the grounds of opposition filed and I find that the notice of motion dated February 27, 2023 has merit. It is allowed giving rise to issuance of the following Orders:-
 - i. The Respondent's salary to the tune of Kshs 90,000/= is hereby ordered attached being arrears to cater for school fees and other school requirements and maintenance of the minors herein and remitted to Account Number 01109060871600, Account Name Beatrice Chelangat At Co-operative Bank-kericho Branch.
 - ii. The Respondent's salary is ordered attached to the extent of Kshs 15,000/- per month being his contribution to the educational needs and or maintenance of the minors herein and remitted to Account Number 01109060871600, Account Name Beatrice Chelangat At Co-operative Bank-kericho Branch.



- iii. The Kenya Defence Force is hereby directed to ensure compliance of the orders of attachment of salary of the Appellant namely:- Kipkorir Bett, personal service number is 73676, 17 Battalion at Ministry of Defence – Kenya Defence Force.
- iv. Each party to bear its own costs.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 15TH DAY OF JUNE, 2023.

J K SERGON

JUDGE

In the presence of:

C/Assistant - Rutoh

Bii for Respondent/Applicant

Kefa holding brief for Oboso for the Resp

