



**PNC v NMC (Family Appeal E111 of 2021)  
[2024] KEHC 14359 (KLR) (Family) (24 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 14359 (KLR)

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

**FAMILY**

**FAMILY APPEAL E111 OF 2021**

**HK CHEMITEI, J**

**OCTOBER 24, 2024**

**BETWEEN**

**PNC ..... APPLICANT**

**AND**

**NMC ..... RESPONDENT**

**RULING**

1. In the application dated 18<sup>th</sup> July 2024 the Applicant seeks orders that the decision of this court dated 11<sup>th</sup> July 2024 be reviewed and in particular paragraph 25 and 26 thereof.
2. The application is based on the grounds on the face of the application and the Applicant’s sworn affidavit dated the same day.
3. The application has been opposed by the respondent vide his replying affidavit on record.
4. The parties have as well filed submissions which the court has perused together with the cited authorities.
5. The impugned paragraphs according to the Applicant simply interchanged the parties so that instead of the court referring the Applicant as the mother it referred her as the father and vice versa.
6. Without belaboring the point, I find the issue raised by the Applicant reasonable in the circumstances and in line with the eventual finding of the court, namely, dismissing the appeal.



7. By dismissing the appeal, the court agreed with the trial's courts finding that:-

“The parties shall have shared custody's such that the plaintiff shall exercise custody during weekdays Monday to Friday while the defendant shall have custody on weekend Saturday 900 am to Sunday 400pm “

8. Looking at paragraph 25 and 26 of the judgment herein I think the court was simply and after discussing the trials courts finding, explaining further the impact of the said judgement on the minor. Save for the interchange of the parties, namely, instead of Respondent the court stated appellant, the tenor and the spirit of the trial courts finding did not change or for that matter the conclusion of this court.

9. To allay any fears of interpretation I find the application to have the judgement reviewed merited and in line with the provisions of Section 80 of the *Civil Procedure Act*. The same is amplified by Order 45 rule 1 which states that;

“Any person considering himself aggrieved—

- (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
- (b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.”

10. In the premises and contrary to the Respondent's reply and submissions I think the error on record is apparent and genuine. If it stays as it is there could be a mistaken interpretation by the parties themselves or other third parties. All that the court did was agree with the decree and judgment of the trial court.

11. Consequently, and in reviewing the said judgment the said paragraph 25 and 26 are hereby deleted as they are of no consequence as they do not go into the merit of the judgement. The other findings are upheld.

12. I do not think the other prayers by the applicant in terms of custody of the minor are for this court to deal with again. The same was exhaustively discussed and if there is any dissatisfaction, they ought to find another forum.

13. Consequently, and for avoidance of doubt paragraphs 25 and 26 of the judgement herein dated 11<sup>th</sup> July 2024 are hereby expunged from the record.

14. Costs shall be in the cause.

**DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAIROBI THIS 24<sup>TH</sup> DAY OF OCTOBER 2024.**

**H K CHEMITEI**

**JUDGE**

