



**JMW v AWM (Appeal E048 of 2023) [2024] KEHC 14471 (KLR)
(Family) (21 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14471 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
APPEAL E048 OF 2023
H NAMISI, J
NOVEMBER 21, 2024**

BETWEEN

JMW APPELLANT

AND

AWM RESPONDENT

RULING

1. Before the Court is a Chamber Summons dated 24 August 2024 seeking the following orders, inter alia:-
 - i. That the Honourable Court do stay the orders issued on 1 August 2024 by the trial court;
 - ii. That the Honourable Court do allow the Appellant to continue paying fees to the tune of Kshs 14,200/= pending the hearing and determination of this application;
 - iii. That the Honourable Court do allow the Appellant to continue paying fees to the tune of Kshs 14,200/= pending the hearing and determination of the suit filed in the lower court;
 - iv. That the Honourable Court do stay proceedings in Children Case No E421 of 2024 pending hearing and determination of this Application;
 - v. That the costs of this application be borne by the Respondent.
2. The Application is supported by an Affidavit sworn by the Applicant and premised on the grounds on the face of it.
3. The Application arises from a Ruling made by the Children’s Court in which the learned Magistrate directed that the Applicant do cater for the minor’s school fees arrears by 26 August 2024 when the schools open for third term, failure to which his salary will automatically be attached. The impugned



order was made pursuant to a Notice to Show Cause dated 27 May 2024 taken out by the Respondent against the Appellant in the trial court.

Brief Background

4. The Respondent filed a suit in the Children's Court primarily seeking custody and maintenance orders. The Plaintiff was accompanied by an application dated 5th March 2024 seeking interim custody and maintenance orders. On 19 March 2024, parties compromised the said application and recorded consent as follows:
 - i. Status quo on custody be maintained;
 - ii. The Defendant shall access the minor when he is available and upon prior request as they have always done;
 - iii. The Children Officer to file a comprehensive Children Officer's Report which shall include a home visit to both homes/interview with both parties and the general welfare of the minor;
 - iv. The Defendant to cater for the minor's school fees and school-related expenses pending the hearing and determination of the main suit;
 - v. The parties to comply with Order 11 of the CPR which shall include filing of Affidavits of Means;
 - vi. The matter be mentioned on 22 April 2024 to confirm compliance and for directions as to the hearing of the main suit;
 - vii. By dint of this order, the Plaintiff's Application dated 5 March 2024 is deemed as dispensed with.
5. On 18 April 2024, the Applicant herein filed an Application in the trial court seeking to review the orders of 19 March 2024 by granting leave to the Applicant to continue paying fees of Kshs 14,200/- to the child's current school pending the hearing and determination of the application as well as the suit. The Applicant averred that the Respondent had arbitrarily and without providing reasons, changed the child's school without prior consultation or consensus with the Applicant, who was now required to pay Kshs 63,550/- instead of the usual Kshs 14,200/-. The child who was previously enrolled at Thika Primrose School was now attending Elyss School.
6. In her Replying Affidavit sworn on 8 May 2024, the Respondent averred that she had changed the child's school since she now lives in Kikuyu whereas Thika Primrose School is located in Thika. It would be impossible for the child to attend school in Thika while residing in Kikuyu. The Respondent further averred that the option presented by the Applicant, ACK Bishop School, is situated in Lower Kabete and is equally too far a commute from Kikuyu. It was the Respondent's contention that the amount of Ksh 14,200/- previously paid by the Applicant covered the tuition only and did not cover other school-related expenses such as transport and meals at Thika Primrose School.
7. On 27 May 2024, the Respondent took out a Notice to Show Cause against the Applicant for school fees arrears amounting to Kshs 49,350/=.
8. Parties filed their respective submissions to both the Notice to Show Cause as well as the Application dated 18 April 2024.



The Application

9. The instant application is filed under section 99 of the *Children Act*, which provides as follows:

Unless otherwise provided under this Act, in any civil or criminal proceedings in a Children’s Court, an appeal shall lie—(a)in the first instance, to the High Court on points of fact and law; and(b)in the second instance, to the Court of Appeal on points of law only.

10. The Respondent filed a Replying Affidavit averring that the Applicant only wants to do the bare minimum for the child and allow the mother to continue providing everything for the child. The Applicant filed a Further Affidavit dated

11. The Application was canvassed by way of written submissions.

Analysis and Determination

12. I have keenly read through the application, the response thereto as well as submissions filed by the respective parties. Looking at the nature of the prayers sought herein by the Applicant, the same are akin to an appeal against the Ruling of the trial court. Further, the Application is brought under provisions of the Act relating to appeals. What is not clear is which Ruling the Applicant is appealing against.

13. Prayer 1 of the Application seeks to stay the order of 1st August 2024. The Applicant has attached a copy of the said Order, which emanates from a Ruling of the trial court presumably made after hearing the Notice to Show Cause as well as the application 18 April 2024. Unfortunately, neither the Ruling nor the proceedings have been placed before this Court for the Court to appreciate the arguments presented by parties before the trial court as well as the reasoning of the trial magistrate in directing that the Applicant clears the school fees arrears.

14. Further, there is no Memorandum of Appeal filed herein, despite the cause being labelled as “Miscellaneous Appeal”. The Court is, therefore, not able to appreciate the grounds of appeal, if any.

15. It would appear that the Applicant has randomly filed an application in the High Court seeking to review the consent orders in the trial court, without specifying whether or not he is appealing the trial court’s Ruling.

16. In view of the foregoing, I find the Application, and in deed the entire cause, wanting. I dismiss the same with costs to the Respondent.

DATED AND DELIVERED AT NAIROBI THIS 21 DAY OF NOV 2024

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

.N/A.....for the Appellant/Applicant

.kemboy h/b Ms. Wacekefor the Respondent

