

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CHILDREN CIVIL APPEAL NO. 1 OF 2020

ENAPPLICANT

VERSUS

JM.....RESPONDENT

RULING

1. In her Notice of Motion dated **19th March 2021**, the applicant prays that the respondent be compelled to pay the minors school fees amounting to **Kshs. 147,000** which is in arrears. The other prayer has been overtaken by events.
2. The application is supported by the sworn affidavit of the applicant dated the same date. The said affidavit has given a chronology of the events in this matter. The trial court after hearing both parties apportioned parental responsibility to the applicant as well as the respondent. The respondent was to cater for education and its ancillary expenses as well as medical and monthly upkeep of **Kshs. 5000**.
3. From the said affidavit it appears that there was an application for contempt against the respondent for failing to comply with the court's judgement. The court however did not find him in contempt as he had complied.
4. The court went further to clarify that the school which the minors ought to attend should be that which the respondent was able to meet its fees and other related expenses. The applicant it appears was not satisfied with the said ruling and she has filed this appeal.
5. The respondent in his replying affidavit dated **26th April 2021** opposes the application on the grounds that he has always complied with the judgement of the trial court and has paid fees at [Particulars Withheld] primary school in which he is able to meet its expenses and was within his capacity. That he has gone ahead to purchase uniforms and the bags for the minors.
6. The applicant however according to the respondent is not happy with the said school but instead she wants the minors to attend [Particulars Withheld] School which he cannot afford. He proposes that he was willing to pay school fees equivalent to what he has paid at [Particulars Withheld] primary school and the applicant to settle the difference so that the children could go to [Particulars Withheld] School which the applicant desires.
7. The court directed the parties to file written submissions which they have complied. The court has perused the same which are more less consistent with their opposing affidavits and the court shall not wish to reproduce them here.
8. The application in my humble view does not disclose why the court should allow it at this interim stage. If the applicant has not complied with the trials court orders and is in arrears of Kshs. 147,000 why doesn't the applicant go back to the same court to seek compliance? This is an appeal and this court unless otherwise should concern itself with the appeal and not interlocutory application which the trial court ought to deal with.
9. In any case there is no evidence before me that the respondent has breached the trials court judgement and this court should in some sense intervene. The trial court directive is clear on apportionment of parental responsibility. I presume that the applicant may not be happy with that and that is why she filed this appeal. That then should await the outcome of the appeal.
10. The issue of which school the minor should attend was clarified by the trial court and if the appellant was not happy then it should form I suppose a ground of appeal.
11. **For now, this court does not find merit in this application and the same is hereby dismissed with no orders as to costs.**

Dated signed and delivered via video link at Nakuru this 4th day of October 2021.

H K CHEMITEI

JUDGE