



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITALE

CIVIL APPEAL NO.11 OF 2019

JA.....APPELLANT/RESPONDENT

VERSES

RNW (ON BEHALF OF

CWO & VX (MINORS).....APPLICANT/RESPONDENT

RULING

1. The Applicant and the Respondent are husband and wife respectively. They are blessed with two children **CWO** and **VX** both are minors. The Respondent filed suit at the lower court seeking inter alia care and custody of the children as well as maintenance from the Appellant /Respondent.

2. When the matter came up for hearing the Respondent raised a preliminary objection on a point of law which was disallowed and he preferred an appeal against the same.

3. The Applicant on the other hand filed the motion dated **22nd May 2019** in which it sought the maintenance orders against the Respondent which included school fees, clothing and general provisions including rent of kshs 8,000 per month. She also prayed that the appeal be heard on priority basis.

4. In her supporting affidavit she argued that there was no order stopping the respondent from carrying out his parental responsibility while awaiting the appeal.

5. The respondent in his replying affidavit has enumerated ills committed by the Applicant including running away from the matrimonial home and taking the children out of the school without his knowledge or consent. He further said that parental responsibility runs both ways and the court cannot condemn him to carry out the parental responsibility alone.

6. The court has perused the affidavits as well as the submissions by the applicant on record. The reality is that the relationship between the two seemed to have broken down and as usual the sufferers are the children.

7. It must be noted that the appeal is still pending and the issues raised therein are not for this court to discuss now. The rights of the minors nonetheless supersede any issues between the two protagonist. While the litigation is ongoing the interest of the children ought to be taken care of. Section 90 of the Children's Act is very clear on this. It states;

“Unless the court otherwise directs, and subject to any financial contribution ordered to be made by any other person, the following presumptions shall apply with regard to the maintenance of a child—

(a) Where the parents of a child were married to each other at the time of the birth of the child and are both living, the duty to maintain a child shall be their joint responsibility;

(d) where a residence order is made in favour of more than one person, it shall be the duty of those persons to jointly maintain the child;”

8. In the premises, and so as not to prejudice the appeal and to ensure that the children are generally maintained pending appeal, it is hereby ordered that;

(A) The Respondent RNW shall have the custody of the minors with the Appellant having unlimited access to them.

(B) The Appellant shall provide school fees and related or incidental expenses for the minors.

(C) The Appellant shall provide medical care for the children.

(D) The Respondent shall provide food, clothing and shelter for the minors.

(E) Costs shall be in the cause.

Dated, signed and delivered in open court at Kitale this 8th day of April 2020.

H. K. CHEMITEI

JUDGE

8/4/2020