



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY AND PROBATE DIVISION

CIVIL APPEAL NO. 115 OF 2019

PKM..... APPELLANT

VERSUS

ANM.....RESPONDENT

RULING

1. The application before court seeks for stay and variation of maintenance orders following an interim ruling by Resident Magistrate R.O. Mbogo made on the 13th of September 2019 in Children's Case Number 202 of 2019.
2. Being aggrieved by the said ruling the appellant preferred this appeal which is yet to be heard. What is before court and subject of this ruling is an interlocutory application.
3. The impugned order requires the appellant who is the father of the minor herein, aged about 3 years, to pay school fees, school related expenses, and Kshs. 20,000 a month to cater for food. The child attends [*particulars withheld*] a school where the fees is Kshs. 97,000 a term. The respondent who is the mother is to offer shelter, clothing and pay the nanny.
4. The application before court is based on grounds that the school fees and maintenance amounts are excessive and beyond the applicant's means and is likely to affect his future.
5. The trial court further granted the appellant access to the child on Saturdays to return the minor on Sunday afternoon on alternative weekends and half of the school holidays. Both parties are to maintain a health cover for the child.
6. In a replying affidavit by the respondent dated 5th December 2019 she opposed the application on grounds that the court considered the facts of the case before arriving at the ruling, further the applicant is the one who chose the school the minor attends and paid the initial deposit and first term fees and he cannot be heard to complain that the same is expensive. Further the respondent stays with the minor, pays for rent, upkeep, clothing, entertainment and the nanny.
7. The parties herein are currently divorced and it therefore follows that they lead separate lives each with her/his own house and utility bills. Between them is a 3-year-old boy for whom both have moral and legal obligation generally. It is not business as usual as the divorce has brought new dynamics in their lives moral and legal obligation generally.

8. The Children's Act ("The Act") succinctly sets out parental responsibilities of each parent of a child. Section 23 of the said act gives the Definition of parental responsibility as follows; -

(1) In this Act, "parental responsibility" means all the duties, rights, powers, responsibilities and authority which by law a parent of a child has in relation to the child and the child's property in a manner consistent with the evolving capacities of the child.

(2) The duties referred to in subsection (1) include in particular—

(a) the duty to maintain the child and in particular to provide him with—

(i) adequate diet;

(ii) shelter;

(iii) clothing;

(iv) medical care including immunisation; and

(v) education and guidance;

Section 24 goes further to apportion that responsibility as follows;

"Who has parental responsibility

(1) Where a child's father and mother were married to each other at the time of his birth, they shall have parental responsibility for the child and neither the father nor the mother of the child shall have a superior right or claim against the other in exercise of such parental responsibility."

9. In my view therefore one need not go further to look at what parents need to do for a child and to what extent. In this instance the parties have joint responsibility towards their son and none is superior or inferior to the other. Evidence before court is that both have income and therefore the responsibilities should be shared equally.

10. The two parents of the minor live separately; it is assumed that each has a house with rent or mortgage to be paid for, they both incur utility bills, purchase food, will need a nanny because each has access to the child etc. These bills would be incurred any ways with or without the minor and should not be an issue before court. The only issues for consideration are school fees, school related expenses and clothing for now.

11. Both parties are in salaried employment and earn substantial income so that none of them should be hard pressed to take up a higher responsibility than the other. Both should realise that it is not the same since their divorce and they should as of necessity build consensus on which school they will both be comfortable to pay.

12. For the reasons enumerated above I am inclined to stay the trial courts order for now and vary the same pending hearing of the appeal to the extent that;

a. The Applicant/father and Respondent/mother shall equally share school fees and school related costs of the minor until further orders of the court.

b. The applicant will also pay Kshs. 10,000 a month which will go to assist the respondent with costs of food and clothing for the minor pending hearing and determination of the appeal.

c. Each will continue to run an insurance cover for the minor.

d. Each party to pay their own costs.

Dated Delivered and signed this 11th day of June, 2020.

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ALI-ARONI

JUDGE