



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MARSABIT

CIVIL APPEAL NO. 15 OF 2019

JEREMIAH HAILE.....APPELLANT

VERSUS

JATTANE JEREMIAH HAILE.....RESPONDENT

(Being an appeal from the Judgement of Hon. COLLINS OMBIJA, Resident Magistrate Marsabit delivered on 2nd September, 2019 in Marsabit Children's Case No.8 of 2019)

J U D G M E N T

The appellant is the respondent's biological father. The respondent by way of plaint dated 8th May, 2019 filed before the Marsabit Senior Resident Magistrate's Court sought a declaration of parental responsibility against the appellant as well as extension of parental responsibility beyond the age of eighteen years. The respondent also sought an order requiring the appellant to pay monthly contribution of Ksh.25,000 for her upkeep and the appellant be compelled to pay school fess timely as the fee become due.

The trial court in its judgment delivered on 2.9.2019 granted the respondent Ksh.18,000 monthly for upkeep as long as she will be in college and extended the parental responsibility. Being dissatisfied with the findings of the trial Court, the appellant preferred this appeal on the following grounds:

- 1. That the trial court erred in law and fact by misapplying the wrong Principle of parental responsibilities against the appellant according to section 23, 24(2), 25(b) and 2(b) of the Children Act.**
- 2. That the trial court erred in law and fact by misapplying the order of for extension of parental responsibility towards the respondent after attaining the age of eighteen years.**
- 3. That the trial Magistrate erred in law and in fact by failing to consider the defence by the appellant.**
- 4. That the sentence meted against the appellant is excessive, harsh and exorbitant in the circumstance owing to the level of income of the appellant and the generality of the case.**

Mr. Nyenyire appeared for the appellant. Counsel submitted that the appellant is not denying parental responsibility. However, the sum of Ksh.18,000 monthly granted to the respondent is excessive and the appellant is not capable of raising that amount. The appellant was involved in a road traffic accident which has incapacitated him and is not able to earn a living from his masonry work. The appellant relies for assistance from his other children for school fees for his younger children plus other basic provisions. Ksh.18,000 monthly translates to Ksh.206,000 a year. The appellant is of the view that a sum of Ksh.8000 monthly is fair.

Mr. Behailu appeared for the respondent. Counsel maintain that the appellant does not deny parenthood. He is merely seeking a review of the amount awarded to the respondent alledging that it is exorbitant. The amount was awarded owing to financial needs of the respondent. The appellant is a man of means and live in a six bedroomed bungalow. He does farming and has rental houses. He is a contractor and not an ordinary mason. He took the respondent to Meru Polytechnic and paid fees for one term only. The child had to drop out. She later joined Maside Muliro University. It is the mother who has been struggling yet there is a another young child in school. All the old children were educated upto the University. The appellant has ten children with the respondent's mother.

This is a first appeal. The Court has to evaluate the evidence afresh before drawing its own conclusion. The respondent told the Court that she is 23 years old. She was born on 7.9.1995. She is a student at Masinde Muliro University and was granted sponsorship by the Marsabit County Government. The scholarship is for Ksh.60,000. She dropped out of Meru Polytechnic due to college fees as her father declined to pay fees. She prayed for extension of parental responsibility. When she was a first year she lived in college hostels but she finished first

year and has to live in rental premises. She is paying Ksh.3000 rent monthly amounting to Ksh.12,000 per semester. She produced rental receipts. She is good in sports and she got sponsorship from form two to form four.

PW2 Tume Wako is the respondent's mother and appellant's wife. She testified that she was supporting her daughter's request as she is not able to raise any money. She used to get money from the Constituency Development Fund (CDF). She has ten (10) children with the appellant.

PW3 David Jeremiah is the appellant's son and sister to the respondent. He dropped out of class 8 and is a boda boda rider. His father bought him a Tuk tuk for business in 2017. He later joined secondary school and dropped out of form two due to school fees. He supported his sisters claim. It is evidence that his father has properties including rental houses. Two of his siblings are still in school. One is in form one while the other is in class seven.

The appellant testified that he is a mason. The respondent is his daughter. He has twelve (12) children. One child is in form one and the other in primary. Another child is in College. He is helped to pay fees by his other children. The respondent refused to co-operate with her elder siblings including *wazee wa manyatta*. He did not know where the respondent was attending college. He has a semi-permanent house with six rooms. The rental houses belong to his daughter by the name Josephine.

DW2 Josephine Jeremiah Haile is a sister to the respondent. Its her evidence that the respondent went to four different secondary schools namely Consolata girls, Marsabit mixed secondary, Goro Rukesa Secondary and later Dakabaricha secondary. She is uncooperative and refused to work with the family. DW2 studied her degree at Kenyatta University. She took a ksh.one million loan and gave it to her father. Her father is sickly and struggling to sustain the family.

DW3 Joyce Jeremiah Haile is the respondent's sister. It is her evidence that the respondent is disobedient and non-cooperative with the rest of the family. DW3 did not know that the respondent was studying at Masinde Muliro University. DW3 was on attachment since 2018.

DW4 Omar Jillo is the chief, Dakabaricha location. He was at one time called to settle the appellant's family dispute. The respondent told him that her complaint was with the OCS. The respondent had reported to the Police that her father had refused to take her to school.

DW5 Mohamed Alkano is an assistant chief and brother in law to the appellant. It is his evidence that the appellant treat all his children equally.

Section 23(1) and (2) of the children Act states 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 immunization; and

(v) education and guidance;

(b) the duty to protect the child from neglect, discrimination and abuse;

(c) the right to—

(i) give parental guidance in religious, moral, social, cultural and other values;

(ii) determine the name of the child;

(iii) appoint a guardian in respect of the child;

(iv) receive, recover, administer and otherwise deal with the property of the child for the benefit and in the best interests of the child;

(v) arrange or restrict the emigration of the child from Kenya;

(vi) upon the death of the child, to arrange for the burial or cremation of the child.

Section 28(1) of the same Act states as follows:-

(1) Parental responsibility in respect of a child may be extended by the court beyond the date of the child's eighteenth birthday if the court is satisfied upon application or of its own motion, that special circumstances exist with regard to the welfare of the child that would necessitate such extension being made: Provided that the order may be applied for after the child's eighteenth birthday.

Under section 2 of the Children Act, the term "child" means any human being under the age of eighteen years. Section 28 of the Act allows the Court to extend parental responsibility beyond the ages of eighteen. The appellant is not denying parental responsibility. It is clear that the appellant has other children who are in school and has to take care of his family. The appeal raises only one issue:-

Whether the sum of Ksh.18,000 monthly awarded to the respondent for her upkeep and maintenance at Masinde Muliro University (MMUST) is excessive.

In my view this matter could have been reconciled between the parties. There is no issue relating to parenthood. I believe the appellant opted to take a back seat as he felt that the respondent was not following his instructions. Although the respondent is an adult, she still needs that parental support until she completes her education. Now that she managed to get sponsorship for her university education, the appellant should be ready to offer his support. This is not an endless support as the respondent's studies will soon come to an end.

In her plaint, the respondent alleged that her father earns about Kshs.100,000 monthly. Even if that were to be true, the appellant has twelve children and is not supporting the respondent only. Even if other children are working, he also has to live his own life and cater for his personal needs. It is unfortunate that the matter degenerated into a Court dispute. The appellant is now 60 years and attached treatment notes from cotelengo mission hospital indicting that he is sick. The appellant is not taking care of the respondent only and has to distribute his income amongst the other dependents. He is self employed.

The respondent is pursuing a Diploma course in Sports administration and Management. She is in her second year. I believe she will be through by next year. It is not clear whether the sponsorship will cover the entire fees at the University. I believe it is a three (3) year course. The Court orders may appear as oppressive to the appellant but the end result is to assist the respondent in her future life. The appellant offered to pay Ksh.8000 monthly. The respondent is paying rent of Ksh.3000 monthly. If she is to stay in college for ten (10) months each year, that translates to Ksh.30,000 per year. She has to cater for her meals and other personal needs.

Taking into account the fact that the appellant has other children to take care of, I do revise the award of Ksh.18,000 monthly to Ksh.13,000. It is my considered view that a sum of Ksh.10,000 is sufficient to cater for the respondent's monthly requirements while the balance of Ksh.3000 will cater for the rent.

The appellant is not contesting the other findings of the trial court.

The appeal partly succeed. The order of the trial Court awarding the respondent Ksh.18,000 monthly for her upkeep and maintenance is hereby varied and replaced with an award of Ksh.13,000 monthly. I do further order that the payment shall stop immediately the respondent completes her Diploma course. The course is expected to end by December 2020. Parties shall meet their respective costs.

Dated, Signed and delivered at Marsabit this 11th day of December, 2019.

S. CHITEMBWE

JUDGE