

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

CIVIL APPEAL NO.19 OF 2015

C L O OAPPLICANT

VERSUS

B O O.RESPONDENT

RULING NO. 2

1. This court, in its ruling dated 6th July 2015 dismissed the applicant's application for stay of execution of the orders of the Children Court directing him to cater for the respondent's college fees. The court proceeded to adjust the orders issued by the Children Court to the effect that the applicant pays Kshs.500,000/= directly to the flying school on or before the end of July 2015, and thereafter pay Kshs.100,000/= monthly to the said school until this appeal is heard and determined.
2. The applicant filed Notice of Motion dated 28th July 2015 under certificate of urgency seeking the review of orders issued by this Court on 6th July 2015 as well as allow the applicant to negotiate with the respondent's school on the mode of payment of the balance of the school fees. He also sought orders that the respondent's mother be ordered to contribute to the respondent's fees as well. The application was based on grounds that the applicant's income cannot satisfy the order of the court thus the prayer to allow for negotiation of the mode of payment with the flying school. He further stated that the respondent's mother was in gainful employment and earns rental income from an apartment and should therefore be made to contribute to the respondent's fees.
3. The application was vehemently opposed by the respondent through his replying affidavit dated 18th September, 2015. He stated that the applicant herein had clearly violated the orders issued by this court by paying Kshs.200,000/= instead of the Kshs.500,000/= as ordered by the Court. He further averred that the applicant had nor raised new matters or shown sufficient cause, nor was his financial means a new matter or mistake or error apparent on the face of the record so as to warrant review order. He stated that his college was not a party to these proceedings and as such the court could not issue orders compelling the said college to negotiate a mode of payment favourable to the applicant. He further averred that his mother was not a party to these proceedings and unless enjoined, cannot be compelled to contribute to his fees. In any case, he stated that the mother had already paid total of Kshs.994,760/= towards his college fees since enrolment and continues to cater for his upkeep and other needs while the applicant has only paid Kshs.200,000/=. He prayed that the motion be dismissed with costs.
4. **Section 80** of the **Civil Procedure Act** and **order 45** of the **Civil Procedure Rules** allow for review of decree or order where there has been discovery of new and important matter that was not within the applicant's or court's knowledge, or where there has been demonstrated mistake or error apparent on the face of the court record, or for any other sufficient reason.
5. No error or mistake apparent on the face of the record has been alleged by the applicant, neither did he table any new or important matter that had been discovered and that was not within his or

the court's knowledge. The issue of the applicant's means was fully considered by this court in its ruling of 6th July 2015. The applicant's affidavit of means and pay slips were placed before the court. The applicant has not shown this court that his financial status has changed since the said ruling was issued so as to warrant a review of the court orders. This court also took into consideration the fact that it was the respondent's mother who had since enrolment at the Flying School catered for his school fees as well as other needs without the applicant's contribution. Further, the respondent's mother was not a party to these proceedings, and no order can issue against her without her being afforded a hearing. I have considered that the applicant is, in any case, in contempt of the orders that he now complains about.

6. In view of all these, the application for review fails and is hereby dismissed with costs.

SIGNED at NAIROBI this 5TH day of April 2016.

A.O. MUCHELULE

JUDGE

DELIVERED at NAIROBI this 6TH day of April 2016.

M. MUIGAI

JUDGE