



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION
CIVIL APPEAL NO. 95 OF 2016

R N G.....APPELLANT/APPLICANT

VERSUS

E G..... RESPONDENT

***(Being Appeal against the judgment of L. Gitari (Chief Magistrate) delivered on 7th September 2016
in the Children's Court at Nairobi Children Cause No. 565 of 2011)***

R U L I N G

1. On 30th September 2016 the Appellant filed a Memorandum of Appeal and contemporaneously with the memorandum of appeal she filed a Notice of Motion dated 3rd October, 2016 brought out under Sections 4, 6, 23, 24, 25 76, 80, 82, 94, 97, 98, 99 & 100 of the **Children's Act Cap 8 of 2001**. The Applicant seeks orders of court that pending the hearing and determination of this application and the intended appeal the court do order and direct the Respondent to pay to the Appellant Kshs.30,000/= monthly, being the child's maintenance, rental expense and food.
2. The application is premised on grounds that the judgment of the Children's court judgment delivered on 7th September 2016 by the Chief Magistrate, found that the suit was premature and the claim for maintenance baseless on the basis that there was a parental responsibility agreement which had been made prior to the filing of the suit in 2010.
3. That Kshs.8,000/= monthly maintenance awarded by the court is inadequate and manifestly low to cater for food, house girl, shelter, water, electricity and other monetary needs for the child. That the judgment was contrary to the best interest of the child as it impliedly and erroneous is found that the monetary needs of the child remain constant, static and unvarying despite the child's growth and development coupled with inflation and passage of time.
4. The Applicant swore an affidavit in support, in which she deposed that the court failed to address the fact that the Respondent had only seen the child a handful of times from birth, which confirmed that unless compelled by the court he would not maintain the child. The Applicant alleged that the said orders are not in the best interest of the minor, unless the court directs and orders the Respondent to immediately provide for the child's rental expenses, clothing needs, quantifies the food needs of the child and other expenses.
5. The Appellant argued that the learned Magistrate erred in law and fact by:

- (a) finding that there was a parental responsibility agreement in force between the parties, which serves to restrict and oust the court's jurisdiction.
- (b) Failing to appreciate and apply the law as regards judicial enforcement, variation and determination of parental responsibility agreement.
- (c) Finding that joint and shared parental responsibility meant equal as opposed to equitable parental responsibility.
- (d) Failing to find that in assessment of the child's maintenance the key consideration is the child's needs
- (e) Failing to find that the Appellant who has no job should not continue bearing aspects of maintenance and generally share maintenance with the Respondent who has a stable well-paying permanent and pensionable job.
- (f) Making a finding that the Respondent should pay only Kshs.8,000 monthly maintenance which is inadequate and manifestly low to cater for food, house girl, shelter, water, electricity and other monetary needs for the child.
- (g) Failing to apply the relevant legal principles applicable for maintenance of children and the best interest of the child; and that
- (h) Failing to find and hold that the fact that the Respondent had barely seen the child more than a handful times from birth confirmed that unless compelled by the court he would never maintain the child.

6. I have considered the grounds of the application, the affidavit in support and the judgment appealed against. The Respondent, who was served as evinced by the affidavit of service sworn on 1st November, 2016 and filed on even date, did not file a Replying affidavit.

7. In the judgment of the Children's court the trial court considered the evidence adduced by the parties therein, the pleadings, a previous order made by the court and the submissions that were filed.

8. The court did find that the facts of the case were not in dispute. That the parties herein are the biological parents of the minors S W and they had entered into a parental responsibility agreement. The Children's court identified the only issue for determination as what the Defendant should provide for the minor.

9. The court did find that the claim by the Plaintiff as pleaded in the plaint was exaggerated. This was because at the time of filing the plaint they had entered into a parental responsibility agreement under which the Applicant was supposed to pay Kshs.2,500/= and another Kshs.2000/= for shopping. The court found the claim for Kshs.120,000/= which was before the court unrealistic.

10. I note that the original parental agreement was reviewed pursuant to the application dated 13th July 2012 for reasons that that the needs of the child had increased. I also note that the court considered the father's earnings and his other obligations and gave a raft of orders all geared towards serving the best interest of the child.

11. In sum therefore I find no basis to interfere with the judgment of the court at this interlocutory stage. The Respondent has so far complied with the parental Responsibility agreement that they signed. The application dated 30th September 2016 is therefore dismissed for want of merit.

SIGNED DATED and DELIVERED in open court this **8th day of December, 2016.**

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L. A. ACHODE

JUDGE