



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL APPEAL NO. 21 OF 2014

SKM..... APPELLANT

VERSUS

MWI (suing for and on behalf of AN AND AN)RESPONDENT

(Being an appeal from the Ruling and Order of the Chief Magistrate's Court, Children Court, Milimani Law Courts, delivered on 13th March 2014 in Children's Case No. 1056 of 2013)

JUDGMENT

1. The appeal herein arises from a ruling delivered on 13th March 2014 by the Nairobi Children's Court in Children's Case No. 1056 of 2013.
2. The impugned order stated as follows-
 1. ***The defendant is hereby ordered to provide food at Kshs. 30,000/- per month to cover items like diapers as well;***
 2. ***The defendant is hereby ordered to cater for the children's medical expenses or to take out a comprehensive medical cover;***
 3. ***The defendant is hereby ordered to cater for the cost of a house help at Kshs. 10,000.00 per month which will enable the plaintiff secure employment ;***
 4. ***The defendant is hereby ordered to provide a part of the house rent and clothing needs for the minors at Kshs. 20,000.00 per month;***
 5. ***Custody care and control of the minors shall vest in the plaintiff with access by the defendant.***
3. From these orders the appellant distilled the grounds of appeal listed in his appeal dated 2nd April 2014 and filed herein on 7th April 2014. He complains:-
 - a. ***That the decision to order him to pay Kshs. 60,000.00 per month as maintenance did not follow the formulae set out in Section 94 of the Children Act, Cap 141, Laws of Kenya, which requires that the actual and true needs of the child or children ought to be established as a basis for working out the monthly payment for maintenance.***
 - b. ***That the order exceeded the monthly income of the appellant and was beyond his means contrary to Section 101(5) of the Children Act;***

- c. *That the court did not consider the appellant's obligations to the needs of the other children who are dependent on him;*
 - d. *That it was wrong to hold that the appellant was solely responsible for the maintenance of the children to the exclusion of the respondent contrary to Section 53(e) of the Constitution which places equal responsibility on both parents;*
 - e. *That the award of maintenance is made arbitrarily and was not supported by the law or the evidence available;*
 - f. *That the court considered matters that were irrelevant to the questions before it; and*
 - g. *That the decision consisted of a miscarriage of justice.*
4. On 25th September 2004 directions were given that the said appeal was to be disposed of by way of written submissions. Both parties complied with the directions by filing their respective submissions; complete with lists of authorities.
 5. In his submissions dated 10th October 2014, the appellant submits that the material filed before the trial court put his income per month as ranging between Kshs 30,000.00 and Kshs. 40,000.00, making it a gross of Kshs. 515,589.00 to Kshs. 650,000.00 per annum; yet the payment ordered by the court amounted to Kshs. 720,000.00 per annum which was way beyond his means. He argues that his monthly income has to be shared with his other children. He submits too that the court did not consider that the respondent too needed to contribute to the welfare of the children.
 6. On her part, the respondent argues that the trial court was lenient in revising the monthly payments for maintenance from Kshs. 100,000.00 to Kshs. 60,000.00 per month. She asserts that the appellant has the capability to pay the amount ordered by the lower court.
 7. I have gone through the record before me as set out in the record of appeal, as well as in the original proceedings in Nairobi Children's Court **Children's Case No. 1056 of 2013**, for the court file in respect thereof was placed before me. I have noted, as Muchelule J. did in the ruling dated 18th August 2014, that the decisions made so far for maintenance were on interlocutory proceedings for the main case is yet to be heard. The decision in question was based purely on the documentary evidence presented in the affidavits presented by the parties.
 8. What is really in contention is the actual income of the appellant. The material before me shows that he runs a law firm in Nairobi. There is no evidence so far that he has any other business from which he derives income. He placed before the lower court a bank statement in respect of the funds held by his law firm, as well as an analysis of the law firm's accounts by a firm of auditors. It does not paint a particularly good picture of the business. There was no counter evidence to this.
 9. A decision on what the appellant was to pay should have been based on the evidence that he provided on his finances, in the absence of any other evidence that he earned more than what he disclosed. That then ought to have been weighed against the other factors – the other children that he was maintaining, among others. Whether he told lies or concealed matter from court ideally are matters for the main trial. The respondent will have opportunity to cross-examine the appellant and expose those alleged lies and untruths.
 10. Maintenance orders are not meant to punish or oppress any party. They should be designed to provide for the needs of the child or children in question, while at the same time respecting the financial status of the parent. A child can only be maintained within the means of the parent in question.
 11. In view of everything that I have stated above, it is my holding that the figure of Kshs. 60,000.00

represented a level of maintenance that was not within the established means of the appellant taking into account the available evidence on his income.

12. It would appear from the averments made by the respondent that the appellant has not been faithful to the orders made by Children's Court on 9th December 2013 of payment of Kshs. 100,000.00 per month and 13th March 2014 of Kshs. 60,000.00 per month. Instead he resorted to paying whatever he fancied. The orders in question are valid for they were made by a court of competent jurisdiction. They have to be obeyed whether the person meant to obey them considers them wrong or erroneous or even "idiotic."

13. I am moved to allow the appeal herein in the following terms:-

- a. **That appellant shall provide a sum of Kshs. 30,000.00 per month as maintenance for the two children, excluding medical expenses, pending the hearing and disposal of the main suit.**
- b. **That the order in (a) above shall become effective only upon the appellant settling all the outstanding arrears of maintenance arising from the orders made on 9th December 2013 and 13th March 2014;**
- c. **That there shall be no order as to costs; and**
- d. **That the lower court's file to be returned to that court.**

DATED, SIGNED and DELIVERED at NAIROBI this 2ND DAY OF OCTOBER, 2015.

W. MUSYOKA

JUDGE