



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Civil Appeal 93 of 2012

HENRY NJOROGE NGANGA.....APPELLANT

VERSUS

MARYLENE NDUTA WAIRIOKO.....RESPONDENT

RULING

The tussle in this matter is over what are being called school related expenses Kimaru J on 11th March 2003 ordered the appellant to pay all to school related expenses for Nathaniel Kevin Warioko, the subject of these proceedings, to enable the said Nathaniel Kevin Warioko to report to school. On 10th April 2013 when the file was placed before me, counsel for the respondent complained that the order of 11th March 2013 omitted the figure of the school fees outstanding. On 17th April 2013, it was confirmed that the appellant had paid school fees, but kept the receipt and that was why there was an impression created that school fees had not been settled. According to the respondents the amount outstanding his Kshs.8,827.00. The appellant countered this by stating that nothing was outstanding on school fees. I directed the parties to file affidavits stating what had been paid and what was due.

Both parties have since complied with my order. The respondent filed her affidavit on 25th April 2013 while the appellant filed his on 26th April 2013.

The respondent is vague in her affidavit on whether or not the appellant had complied with the order as it related to school fees. She complains in paragraph 5 that the appellant paid the fees in bits without indicating whether the same has been settled in full. At paragraph 6 she says that he has paid an amount of Kshs.5000.00 for Nathaniel, but she does not say whether this settled the account. These averments do not give clear picture at all of what has been paid by the appellant. Paragraph 6 is meant to attach an annexure MN1, being receipt for the payment of Ksh. 5000.00 as fees. The receipt is not part of the documents exhibited in MN1. The respondent should have awarded the fee structure to indicate the total amount of fees due to the account of the child and receipts or at least a break-down of what she alleges the appellant has paid, so that I am able to get a full picture of what is due in total and what is outstanding after the appellant paid the bits – that the respondent has averred to.

The respondent in his affidavit avers at paragraph 3 that by the time Kimaru J made the order of 11th March 2013, the school fees balance outstanding on the fees was Kshs.11,000.00 for both children. This amount was paid on 19th March 2013, and he has exhibited a bank deposit slip relating to the amount, which is marked as exhibit B. The respondent's counsel conceded as much on 17th April 2013. It would appear from this suit the matter of school fees for the first term is fully settled.

Both parties are fairly vague in their affidavits on the so called school related expenses. What are these expenses? Do they relate to items that the school has specifically stated must be provided? Or do they

relate to items of a personal nature that a student naturally requires in school- such as soap, toothpaste, shoe polish etc? None of the parties addressed me on this. No list was placed before me and categorically described as the school related expenses that the parties were talking about.

At paragraph 9 of her affidavit, the respondent alleges that the appellant is supposed to pay all school related expenses for Nathaniel Warioko. At paragraph 10 she says that the appellant called the boy and bought books, school uniform and some shopping. At paragraph 11 she says that she was given Kshs.5,000.00 to buy other **“stuff from where its cheaper”**. She lists in paragraph 12 what she allegedly purchased with the money. Annexure “MN1” attaches copies of receipts of the items that she bought with the Kshs.5,000/- given to her by the appellant. She says she spent a total of Kshs.8827.00 on these purchases, meaning that she topped up with her own Kshs.3,827.00. At paragraph 13 she alleges that a rugby ball has not been bought and so are school shoes, yet at paragraph 15 she says that Nathaniel went to school with some old shoes too small for him.

On the school related expenses the appellant avers that he gave the respondent Kshs.5,000.00 on part of the **“school related”** expenses. At paragraph 7 he alleges that he has attached a list of what he bought. The paragraph does not refer to any annexure, but there is a bundle of receipts marked “B” at the end of the affidavit. He says that he gave out Kshs.1500 for the purchase of school shoes. He also concedes that he has not bought the rugby ball. Helpfully, he had attached a copy of the school's uniform requirements.

The issue of school fees has been sorted out fully. It would also appear that the matter of the school related expenses has also been dealt with substantially. The only issue outstanding appears to touch on the school shoes and the rugby ball. On the shoes, the appellant alleges that he gave money for the purpose to the respondent. It is not indicated when and where this happened. On the rugby ball, which is listed in the uniform requirements attached to his affidavit, the appellant says that the games teacher informed him that they had enough balls in the school. No evidence has been provided with relation to this communication.

The respondent alleges at paragraph 16 that the appellant has not met his obligations fully. She says there is a balance of Kshs.8,827.00. No evidence has been provided for this alleged balance. No breakdown either has been given. The figure of Kshs.8,827 appearing at paragraph 12 of her affidavit is not of what is outstanding, but a breakdown of the expenditure of the sum of Kshs.5,000.00 given to him by the appellant. At paragraph 14 she alleges that she spent Kshs.1000.00 on medical check up and traveling. This does not tally with paragraph 121 where she has itemized the expense for medical check up and traveling as Kshs 600.00 and Kshs.1230.00. Something does not quite add up.

From the foregoing I will make the following orders/directions:-

1. That the appellant shall buy school shoes and a rugby ball for Nathaniel Kevin Warioko.
2. That the alleged outstanding sum of Kshs.8,827.00 has not been proved.
3. That in future the appellant shall settle school fees directly with the school and shall at all times settle the fees timeously.
4. That regarding school related expenses, the appellant shall purchase these directly for the child, avoid shall and giving any money to the respondent in respect of any expenses, to avoid disputes accountability.
5. That the parties shall endeavour to obtain written information on any issue touching no school related expenses.
6. That there is liberty to apply.

DATED, SIGNED and DELIVERED at NAIROBI this 2ND DAY OF May, 2013.

W. M. MUSYOKA

JUDGE