



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Appeal 38 of 2008**

**M. M..... APPELLANT  
VERSUS**

**J.G.K.....RESPONDENT**

**J U D G M E N T**

The appellant herein filed a plaint in the Children's Court at Nairobi. The respondent herein was named as the defendant therein. The plaint was dated 31<sup>st</sup> August, 2007. The orders sought in the plaint were as follows-

**(a) *Legal custody, care and control of the minors herein***

***be given to the Plaintiff (for clarity the minors are listed in the plaint as W.B born July, 1990 and J. N born April 2001).***

**(b) *A declaration that the defendant is duty bound to takes exercise and or discharge parental responsibility over the minors by providing as follows-***

- ***food Kshs.4000/= per month***
- ***rent Kshs.4500/= per month***
- ***clothing Kshs.3000 per 3 months***
- ***school fees, school uniforms and other related expenses***
- ***medical expenses as and when the need arises.***

**(b) *costs of this suit***

**(c) *interest on (a) and (b) above at court rates.***

**(d) *any other or further relief this honourable court may***

***deem fit and expedient to grant.***

The appellant also in those proceedings filed an affidavit of means deposing, inter alia, that the respondent was an aviation mechanic at BP/Shell Company earning approximately Kshs.20,000/= per month, and that she herself had a small business earning less than Kshs.5000/= per month.

The respondent filed a statement of defence claiming, inter alia that the appellant left the matrimonial home on her own volition; that he has been supportive of the issue of the marriage; that the appellant is an alcoholic; and that the appellant was running a tailoring business where she earned over Kshs.20,000 per month.

The appellant filed a reply to defence denying, inter alia, that she was an alcoholic, and also denying that she earns Kshs.20,000/= per month from her business.

In the Children's Court, only the appellant and the respondent tendered evidence, from which the court gave its judgment. The appellant has now appealed to this court from that judgment.

In that judgment the Children court found that, in the marriage, there was only one issue who was J N. The other child W B was born out of Wedlock. The court found that the respondent was actually taking care or shouldering responsibility for the child of the marriage. The magistrate found that the two parents had equal responsibilities for the maintenance of the child. The court ordered that the respondent do pay for the child J N school fees and related expenses in school uniform, books, lunch, school trips, stationery and anything that may be required for the school. In effect, other expenses were to be borne by the appellant.

That is the judgment from which the appellant has appealed to this court claiming mainly that the magistrate did not take into account the fact that the appellant did not have means to feed and accommodate the child, and also that the appellant has other children to look after.

I have perused the evidence on record and the judgment of the subordinate court. In my view, the Children's Court took into account all the evidence placed before it. There was no misdirection or error that I can identify. The Children Court was right in deciding that each of the two parents has equal responsibility for the child of the marriage under the Children Act (*No. 8 of 2001*).

I find no basis for upholding this appeal. It is not merited. I am sure that if there are changed circumstances, under the Children Act 2001, an appropriate application can be made for the variation of the Children Court's orders, in the best interests of the child. Otherwise, with the facts on record, I find no merits in the appeal and have to dismiss the same.

Consequently, and for the above reasons, I find no merits in the appeal and I dismiss the same. Parties to bear their respective costs, as this is a family matter.

Dated and delivered at Nairobi this 1<sup>st</sup> day of March, 2010.

**George Dulu**  
**Judge.**

**In the presence of-**

Appellant – present in person

Mr. Mwaniki for respondent

David Mutisya Court Clerk.