



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Children's Civil Appeal 21 of 2006**

**B A A .....APPELLANT**

**VERSUS**

**A O A.....RESPONDENT**

**JUDGEMENT**

The parties herein are Muslims by religion and after they married under Islamic law, they divorced.

The Respondent had the custody of the child of the marriage.

Afterwards the Respondent complained to the children's office and the Appellant paid Shs.400/= for four months, thus according to her as at 27<sup>th</sup> January, 2006, the Appellant had an arrears of Shs.9,600/=. The Respondent then filed the suit being Children's Case No.2 of 2006 seeking an order that the Appellant be obligated to maintain the child of their marriage.

The Appellant filed his defence. He mentioned that the Respondent filed an application to increase the amount of Shs.400/= to Shs.800/=. He also stated that the Respondent sent the child to the Public School without his consent and it was not necessary.

In evidence the Respondent only stated that the fees for her male child, who was in class five as on 27<sup>th</sup> April 2006, was Shs.3,200/= per term.

She also ask for uniform, books, food and shelter and in total money for Shs.5,000/= per month for maintenance of the child.

It is on record that she works at Wajir Prison.

The appellant testified that she is a Corporal with police force and that she was civil servant and the Respondent also should contribute in taking care of the child. The Appellant further stated that he was ready to take care of school fees, clothes and other needs of the child. The Respondent should take care of his food. In cross-examination he agreed that he had no other child and that he was paying Ksh.400 every month.

The evidence of his other witnesses, in my considered view, is of no relevance to the issues before the court.

In the judgment the learned Children Magistrate conceded that as per law both parents have a duty to maintain the child and that the appellant did not dispute the issues put forth by the Respondent.

After considering the evidence, the Appellant was ordered to pay Ksh.4,000/= per month commencing from 10<sup>th</sup> June 2006, till the child attains age of maturity (*sic*).

The Appellant being aggrieved filed this application on the following grounds:

1. The Learned Magistrate erred in law and in fact in ordering that the respondent do make contributions towards the upkeep of the minor of KShs.4.000 per month without any evidence from the Respondent on the amount of school fees payable.
2. The Learned Magistrate erred in Law and in fact in holding that the Respondent was wholly liable in making the minor's monthly contributions of KShs.4,000 despite holding that the parental responsibilities in respect of the minor was to be shared by both parents.
3. The Learned Magistrate erred in Law and in fact in failing to consider evidence tendered by the respondent viz his net monthly income as a Civil Servant and his other family responsibilities.
4. That The Learned Magistrate erred in Law and in fact in failing to consider the Respondent was willing to take care of the minor's other basic need given the custody of the minor.
5. The Learned Magistrate erred in holding but failing to consider that both the appellant and the respondent are gainfully employed.
6. That The Learned Magistrate erred in Law and in fact in failing to take and record the whole of the oral evidence tendered before him during the hearing.
7. That The Learned Magistrate erred in Law and in fact in failing to consider fairly matters as set forth in the plaint and defence while reaching his judgment and in particular paragraph 8 of the defence.

The counsel filed written submissions as directed by court on 5<sup>th</sup> October 2007.

The counsel did not make any oral submissions, when the matter came before me for hearing on 7<sup>th</sup> July 2008.

The submissions made on behalf of the Appellant mentioned about the facts of the appellant's marriage and his children from the second marriage. With due respect to the counsel for the Appellant, those submissions were unwanted and without any basis. Those facts were definitely not before the Children's Court and there was no application to bring in any fresh evidence before this court. I would thus ignore those facts brought only in the submissions.

The only issue before me is the grievances of the Appellant that despite the learned magistrate having agreed that both parents have the duty to take care of children, the court only burdened him and not the Respondent.

The record of this appeal shows that the Respondent asked for KShs.5,000/= per month. The Appellant in his evidence agreed to take care of school fees, clothes and other needs of their son and only expected the Respondent to cater for the food of the child.

The learned magistrate with those facts directed the Applicant to pay Shs.4,000/= per month.

I have considered the submissions filed by both counsel and the record of appeal. I do not think the learned Magistrate has erred seriously in awarding Shs.4,000/= per month against Shs.5,000 per month asked by the Respondent. However, I do find that the learned Magistrate could have made a slight

mistake in calculating the school fees of Shs.3,200 which is the term fees and not the monthly fees.

It is true that he earns around KShs.20,000 per month, but the Respondent is also gainfully employed.

Doing best I could, I shall order that the order of KShs.4,000/= per month given by the learned Children Magistrate be reduced to the order of Shs.3,500/= per month to be payable from 2<sup>nd</sup> October 2008.

I allow the appeal to that extent. I order that the costs of the appeal be borne by each party.

Dated and signed at Nairobi this 2<sup>nd</sup> day of October, 2008.

**K.H. RAWAL**

**JUDGE**

**2.10.08**