



**AKN v AW (Appeal E010 of 2025) [2025] KEHC 13483 (KLR)
(Family) (30 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13483 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
APPEAL E010 OF 2025
H NAMISI, J
SEPTEMBER 30, 2025**

BETWEEN

AKN APPELLANT

AND

AW RESPONDENT

RULING

1. Before the Court is the Applicant’s Notice of Motion dated 27 January 2025 seeking the following orders:
 - i. Spent;
 - ii. That the Honourable Court be pleased to issue an order for stay and/or set aside the orders of Hon. Terer on 9 August 2024 and the Orders of Hon. R. Gitau issued on 7 January 2025 pending the hearing and determination of this Application;
 - iii. That the Honourable Court be pleased to issue an order for stay and/or set aside the orders of Hon. Terer on 9 August 2024 and the Orders of Hon. R. Gitau issued on 7 January 2025 pending the hearing and determination of this appeal;
 - iv. That the Honorable Court be pleased to issue an order to review and/or vary the Orders of Hon. Terer on 9 August 2024 and the orders of Hon R. Gitau issued on 7 January 2025 pending the hearing and determination of this Application;
 - v. That the Honorable Court be pleased to issue an order to review and/or vary the Orders of Hon. Terer on 9 August 2024 and the orders of Hon R. Gitau issued on 7 January 2025 pending the hearing and determination of this appeal;



- vi. That the Honorable Court be pleased to issue an order allowing the Plaintiff/Applicant to pay Kshs 100,000/= for each minor, totalling Kshs 200,000/= for both the minors for school fees and school-related expenses pending the hearing and determination of this Appeal;
 - vii. That the costs of this application be provided for.
2. The matter giving rise to this appeal has a brief but contested history. The dispute commenced at the Children’s Court, wherein the Applicant sought injunctive orders to restrain the Respondent from transferring their two children from the-then current school, [particulars withheld] Children’s House.
 3. On 9 August 2024, Hon. Terer delivered a Ruling that permitted the transfer of the children to a school within Ruiru locality, where the Respondent had relocated. The learned Magistrate further ordered that should the parties fail to mutually agree on a new school, the children would be enrolled at [particulars withheld]. In that event, the Applicant was directed to contribute a sum of Kshs 300,000/- per term towards the school fees and related expenses for both children.
 4. On the same day of the Ruling, the Applicant filed an application seeking a review of the said orders. The primary ground for the review was a change in his financial circumstances, namely, his resignation from his employment at Stanbic Bank Limited. The application was heard and determined by Hon. Gitau, who, in a considered Ruling delivered on 7 January 2025, dismissed the application and upheld the orders of Hon. Terer.
 5. Being aggrieved by the dismissal of his review application, the Applicant has now escalated the matter to this Court by filing the present appeal together with the Notice of Motion. The central pillar of the application is what the Applicant terms as discovery of new and important matter or evidence. This new matter is his resignation from his role as Manager at Stanbic Bank, which he states was formally acknowledged on 1 August 2024. His last working day was 29 August 2024, after which he was rendered jobless and without a source of income. The Applicant claims that this resignation, though professionally worded in his notice as a pursuit of other opportunities, was occasioned by frustrations from management.
 6. Consequently, the Applicant contends that he is unable to comply with the order requiring him to pay Kshs 300,000/= per term towards the children’s school fees. As a demonstration of his commitment to his parental responsibilities, the Applicant has offered to raise Kshs 100,000/= per child, pending the hearing and determination of the appeal.
 7. The Applicant submits that the conditions for review under Section 80 of the *Civil Procedure Act* and Order 45 of the *Civil Procedure Rules* have been met. His change of employment status is presented as new evidence that was not within his knowledge and could not be fully ventilated before Hon. Terer delivered the initial ruling.
 8. The Applicant argues that he has an arguable appeal with a high probability of success. He contends that the appeal will be rendered nugatory if the stay is not granted, as he faces the imminent risk of committal to civil jail for contempt of court, an outcome that would be gravely detrimental to the welfare and education of the children. He relies on the principles articulated in *Stanley Kang’ethe Kinyanjui -vs- Tony Ketter & 5 Others* {2013} eKLR. The Applicant invokes the paramountcy principle enshrined in Article 53(2) of the *Constitution*, submitting that compelling him to pay an amount he cannot afford, and the resultant threat of imprisonment, is not in the best interests of the children.
 9. The Respondent has mounted a spirited opposition to the Application. Her primary contention is that the Applicant fundamentally misrepresented his employment and financial status to the Court. The



Respondent adduced new evidence to the effect that the Applicant is not jobless as he claims, but is in fact currently employed as a Point of Sale Manager at DPO Pay By Network, a global digital payments company. This assertion is substantiated by the Affidavit of her Advocate, which details a telephone inquiry made to the company and is corroborated by screen shots from the websites SignalHire and Zoominfo, which list the Applicant as an employee.

10. The Respondent argues that the Applicant has approached the Court with unclean hands and has engaged in material non-disclosure, thereby disentitling him to the equitable remedies of review and stay. The Respondent submits that the Applicant's conduct is a glaring abuse of the court process.
11. The Respondent points out a significant contradiction in the Applicant's plea for financial incapacity. She refers to the correspondence from the Applicant's Advocate dated 29 August 2024, a date after the Applicant's resignation was effective, in which the Applicant unequivocally offered to pay the full school fees for both children at Nova Pioneer School, which would amount to Kshs 359,400/- per term. The Advocate's letter explicitly stated that their client was amenable and willing to cater for the education of both the minors at Nova Pioneer School albeit losing his employment. This amount is substantially higher than the Kshs 300,000/= that the Applicant states he is now unable to pay.
12. The Respondent also challenges the Appellant's narrative regarding his departure from Stanbic Bank, suggesting that this was a calculated and voluntary career progression rather than a forced exit due to frustration as claimed by the Applicant. The Respondent submits that a stay or review of the maintenance orders would be gravely detrimental to the children. The children have been enrolled at Woodcreek School since September 2024 and are settled in their academic and social environment. Uprooting them or creating uncertainty around the payment of their fees would cause immense instability disruption and emotional distress.

Analysis & Determination

13. I have considered the Affidavits on record, the various annexures and the submissions of the parties. The key issues for determination are:
 - i. Whether the applicant has met the legal threshold for a review of the trial court's orders;
 - ii. Whether the conditions for granting stay of execution pending appeal have been satisfied;
 - iii. The overriding principle of the best interests of the child.
14. The power of this Court to review a judicial order is provided under Section 80 of the [Civil Procedure Act](#) and Order 45 Rule 1 of the [Civil Procedure Rules](#). An applicant must demonstrate either
 - (a) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time;
 - (b) some mistake or error apparent on the face of the record; or
 - (c) any other sufficient reason.
15. The Application is premised on the discovery of new and important matter, which the Applicant defines as his loss of employment at Stanbic Bank and his subsequent state of joblessness. However, the Respondent has presented compelling, and as yet unrebutted, evidence that the Applicant is in fact gainfully employed at DPO Pay by Network. The Applicant did not file any Affidavit to rebut these allegations. In the face of such contradiction, the Court is not satisfied that the new matter is the Applicant's joblessness. Rather, the evidence points to a different new matter: his transition to a new job. This fact does not support his plea for a downward variation of his maintenance obligations. If



anything, it confirms his continued capacity to provide. The Applicant has, therefore, failed to prove the existence of the new matter as framed in his application, thus has failed to meet the stringent threshold for review under Order 45.

16. The principles for the grant of stay of execution pending appeal under Order 42 rule 6 of the Civil Procedure Rules are well settled. The Applicant must satisfy the Court on two cumulative conditions; first, that he has an arguable appeal, and second, that the appeal would be rendered nugatory if the stay is not granted. This was authoritatively stated in the case of Stanley Kangethe Kinyanjui v Tony Ketter & 5 others [2013] KECA 378 (KLR).
17. An arguable appeal is not one that must necessarily succeed, but one which presents a *bona fide* question for judicial consideration. Without making any definitive findings, the Court is prepared to accept that an appeal challenging the quantum of a maintenance order based on an assessment of a parent's means is arguable.
18. The more critical limb is whether the appeal will be rendered nugatory. The Applicant argues that it will be, due to the risk of his committal to civil jail for non-compliance. While the Court does not take the prospect of imprisonment lightly, this argument is misapplied in the context of child maintenance. The subject matter of this appeal is not a commercial debt that can be repaid if the appeal succeeds. The subject matter is the continuous and uninterrupted education and welfare of two young children. The harm to the children is direct, substantial and permanent. In contrast, the potential harm to the Applicant is a consequence of his failure to obey a court order, for which the law provides various enforcement mechanisms
19. Therefore, the balance of convenience and assessment of what would render the appeal nugatory tilts overwhelmingly in favor of protecting the children's immediate welfare. Denying the stay preserves the subject matter of the dispute – the children's education.
20. In summary, this application, viewed through the lens of the children's best interests, is unmeritorious. It seeks to prioritize the Applicant's contested financial convenience over the children's certain and immediate educational needs.
21. Accordingly, the Notice of Motion dated 27 January 2025 is dismissed, with costs in the cause.

DATED AND DELIVERED AT NAIROBI THIS 30TH DAY OF SEPTEMBER, 2025

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

For Appellant/Applicant: Mr. Wamae h/b Lusyola

For Respondent: Ms. Ngunyi h/b Mrs. Okullo

Court Assistant: Lucy Mwangi

