



TSKC (Suing as the Father and Next Friend of the Minor) v DAO (Civil Appeal E112 of 2023) [2025] KEHC 13244 (KLR) (Family) (26 September 2025) (Ruling)

Neutral citation: [2025] KEHC 13244 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
CIVIL APPEAL E112 OF 2023
PM NYAUNDI, J
SEPTEMBER 26, 2025**

BETWEEN

TSKC APPELLANT

SUING AS THE FATHER AND NEXT FRIEND OF THE MINOR

AND

DAO RESPONDENT

RULING

1. The Applicant presents the Notice of Motion dated 22nd July 2024 under Section 5 of the Judicature Act, Sections 3, 3A, of the Civil Procedure Act and Article 159 (2)(d) of the Constitution of Kenya and seeks the following orders-
 - a. Spent
 - b. That the Respondent DOO be cited for being in contempt of the Court Orders and be imprisoned for 6 months
 - c. That the Honorable Judge be pleased to issue production order of the minor NSC during the hearing of this application.
 - d. That the Honorable Court be pleased to direct the Kenyan Immigration Department to table the Respondent’s DAO documentation that is based on their immigration file number : R 120 1436 who may be travelling on the current valid passport number EK XXXXXX and her national ID number is: XXXXXX. Likewise required are similar details on the minor; NSC’s immigration and travel history as well as records. The minor’s birth certificate is Entity Number XXXXXXXXXXXX
 - e. The Costs of this Application be provided for.



2. The application is supported by the affidavit of the Applicant in which he avers that the respondent is in contempt of the orders of the court issued on 5th July 2024 as she failed to avail the child after he initiated the process of securing a passport. He is apprehensive that the respondent used dubious means to obtain travel documents for the minor to the detriment of the child's welfare. He is also aggrieved by the fact that he has not had access to the child since 24th September 2022. The respondent has not ensured virtual access of the applicant to the minor as was directed by Court.
3. The respondent has sworn affidavit in response on 4th November 2024. She denies being in contempt of the orders of the Court and submits that the applicant declined to sign the document that she forwarded to him. She states that the Applicant did not inform her when he made the application for the passport and that she facilitated the travel of the minor legitimately. Further the applicant has not sought to access the minor.
4. Both parties complied with the directions that the application be canvassed via written submissions. The Applicant's submissions are dated 19th February 2024 (sic) and he frames the issues for determination as follows-
 - a. Whether the Respondent has acted in contravention of this Court's order of 5th July 2024
 - b. What remedies shall this Court grant the Respondent.
5. On the 1st issue, it is submitted that the Court has the power to vary any order and that the Appellant acted contrary to the order of the Court when she engineered to the process of travel documents of the minor without the sanction of the appellant. It is suggested that she acted criminally. No authorities are cited.
6. The respondent's submissions are dated 17th March 2025 and the following are the issues framed for determination
 - a. Whether the Respondent is in contempt of court orders
 - b. Whether a production order should be issued for the minor herein during the hearing of this application
 - c. Whether it is proper for the Kenyan Immigration to table documentation based on the Respondent's immigration file number.
7. She submits that the principles to guide a court are those in the decision of Samuel M. N. Mweru & Others V National Land Commission & 2 Others [2020] eKLR. It is submitted that a consideration of the terms of the judgment show that she is not in contempt, as she was to retain physical custody of the child and she has not denied the applicant access to the minor.
8. On the 2nd issue, it is submitted that it is not in the child's interest to issue a production order and reference made to the decision in M.A. v R.O.O [2013] eKLR. Her incarceration as proposed is also not in the interests of the minor as she is the primary caregiver of the minor.
9. On the 3rd issue it is submitted that availing her immigration file constitutes a violation of her right to privacy. She asks that the applicant be barred from instituting frivolous applications such as the current one.

Analysis And Determination

10. Having considered the pleadings herein I discern the following as the issues for determination-



- a. Whether the Respondent is in contempt of the Orders of the Court issued on 5th July 2024.
 - b. If (a) is answered in the affirmative what are the consequential orders?
 - c. Who should pay costs of the suit?
11. There is a plethora of Court decisions on the test that the Court will apply in determining whether or not to find a party guilty of contempt of Court. The Court of Appeal in *Kenya National Union of Teachers & 2 others v Teachers Service Commission* [2018] KECA 214 (KLR), restated it thus-
- a. The first test is the determination of the existence of the order(s) made by a court of competent jurisdiction and which was (were) allegedly transgressed.
 - b. The Second test is the identification of the addressee(s) of the order allegedly transgressed
 - c. The third test is the determination of whether the orders allegedly transgressed required the addressee (s) to do or refrain from doing something
 - d. The fourth test deals with the determination of the address's knowledge of both the existence of the orders as well as the requirements in such orders as to what the address(s) should or should not do
12. In the instant case it is submitted that by failing to present the documents to facilitate travel of the minor to the appellant and consequently travelling out of the Country the respondent acted in Contempt. I have carefully examined the Orders it is evident that the Court gave authority to the respondent to travel out of the Country with the minor. In directing that the applicant file documents to facilitate travel, this was not a condition precedent to the travel. The Applicant did not require his approval. He was to support the process as required.
13. It would appear that his facilitation or support was not required. The applicant wishes the Court to make the inference that he not having been involved, the respondent's removal of the minor must have been shady bordering on criminal. I am unable to arrive at that conclusion. For this reason I decline to issue the orders relating to the production of the minor and the travel records of the respondent with the Director immigration. Basis has not been laid to justify this extremity.
14. The claim that access has been denied is unsubstantiated, I would have liked to see communication between the parties or their counsel to back this assertion. For this reason I will dismiss the application.
15. Owing to the relationship between the parties there shall be no order as to costs.
16. Parties exercising their right to appeal will file appeal within 30 days
- It is so ordered.

SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 26TH DAY OF SEPTEMBER 2025.

P. M NYAUNDI

JUDGE

In the presence of

Fardosa Court Assistant

Gicheha for Applicant

Morara for Respondent

