



REPUBLIC OF KENYA



**KENYA LAW**  
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**ZWN v FM (Civil Appeal E195 of 2025)  
[2025] KEHC 13259 (KLR) (29 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13259 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CIVIL APPEAL E195 OF 2025  
A MABEYA, J  
SEPTEMBER 29, 2025**

**BETWEEN**

**ZWN ..... APPELLANT**

**AND**

**FM ..... RESPONDENT**

*(Being an appeal from the ruling/orders of the Honourable B. Ireri (SPM)  
at Kisumu in Kisumu MCCHC No. E098 of 2023 delivered on 27/8/2025)*

**RULING**

1. I have considered the following: -
  - a. This is a Children's matter. It has to be handled with the greatest care.
  - b. Under the [Children's Act](#) of 2022, the Children's best interest is the guiding principle.
  - c. I note that the matter before the trial court has not even taken off. I do not know who of the parties is guilty of the said circumstances.
  - d. I have noted the tender age of the children. In all probability, the Courts have to be very careful and considerate before making any drastic orders in respect thereof.
  - e. It is for that reason that thrice on 10/9/2025, 15/9/2025 and 23/9/2025 I refrained myself from making any orders on the Motion dated 5/9/2025. This was to give the respondent the opportunity of being heard on the impugned ruling/orders.
  - f. Three times, on 10/9/2025, 15/9/2025 and 23/9/2025, the Court directed the respondent to respond to the Motion if she was opposed to the same. Despite as aforesaid to date she has not.



2. In view of the foregoing, it is clear that she has no intention of either responding to the Motion or she is not opposed to the orders sought.
3. In any event, I note that the older child had been placed in an environment from which she had been uprooted from i.e [Name Withheld] School. That when she was placed thereon, she became adamant not to travel to travel to be united with the respondent.
4. While this Court exercised extreme caution not to deal with the matters in the Motion before me, the respondent has remained adamant not to respond thereto.
5. Aware of the dictates of Article 159(2) of the *Constitution* i.e that justice must be dispensed to all without discrimination and without delay, I opine that any further delay in not considering the Motion will be unfair to the appellant who has been waiting before this Court for nearly a month to be heard on his complaints.
6. In this regard, the Court is left with no alternative but to hear and consider the Motion as being unopposed. Mr. Magesa to proceed.

It is so ordered.

**DATED AND DELIVERED AT KISUMU THIS 29<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

**A. MABEYA, FCI Arb**

**JUDGE**

