



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**ZWN v FM (Civil Appeal E195 of 2025)
[2025] KEHC 13285 (KLR) (29 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13285 (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 submissions by Learned Counsel. I have considered that the positive averments made on oath have not been denied or controverted.
2. I have seen the proceedings of the Lower Court. The Report of the Children's Officer indicate that the elder child had refused to go to the respondent's home in Nairobi. It also indicated that the children were comfortable where they were and in particular the school where the elder child had been placed for study.
3. There is a positive averment that the trial court did interview the child on 2/8/2025 and the child was adamant on her refusal to go to Nairobi. Nowhere in its decision did the Lower Court alluded to that interview and the reason to deport from the findings of the Children's Officer, though not bound.
4. Noting that the respondent has failed to oppose or deny these averments even after being given adequate opportunities i.e 3 times, the Court is constrained to allow the application as prayed.
5. In the meantime, the Lower Court is directed to take steps and have the matter concluded at the earliest in order for it to make well informed decision based on viva voce evidence.

It is so ordered.



DATED AND DELIVERED AT KISUMU THIS 29TH DAY OF SEPTEMBER, 2025.

A. MABEYA, FCI Arb

JUDGE

