



**EDMK v JWR (Civil Appeal E138 of 2025)  
[2025] KEHC 14601 (KLR) (Family) (16 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14601 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
CIVIL APPEAL E138 OF 2025  
PM NYAUNDI, J  
OCTOBER 16, 2025**

**BETWEEN**

**EDMK ..... APPLICANT**

**AND**

**JWR ..... RESPONDENT**

**RULING**

1. Vide application dated 26<sup>th</sup> August 2025, the Applicant seeks inter alia that-
  - a. This Honorable Court be pleased to vary and/ or suspend the attachment orders issued by the Children’s Court nad instead adopt a structured, child- focused school fees payment plan proposed by the Appellant, with fees paid directly to the school to secure continuity of education and
  - b. Costs of this application be in the cause.
2. The Application is supported by the affidavit of the applicant sworn on the 26<sup>th</sup> August 2025 and further affidavit sworn 22<sup>nd</sup> September 2025. He is aggrieved by the order of the Court on 8<sup>th</sup> August 2025 attaching his pension. On the 12<sup>th</sup> August 2025 and 14<sup>th</sup> August 2025, the responder extracted order directing deduction of his pension in the sums of Kshs 1,032,480 and Kshs 8,032,840 respectively.
3. He admits the execution of a parental Responsibility Agreement on 10<sup>th</sup> February 2023, under which he was required school fees for the minor and school relates expenses, provide for medical for the minor under his medical cover, provide monthly payments towards food and rent of Ksh 15,000 and Kshs 30,000 respectively. It is his averment that he has complied with the parental responsibility agreement.



4. He submits that having retired his circumstances have substantially changed and he applied to vary the parental responsibility agreement. Owing to his changed circumstances, he defaulted in honouring some commitments, but he has made very effort to honour the same. The order attaching his pension is punitive, excessive, disproportionate, exaggerated, extortionist and unlawful.
5. He contests the figures as they were not quantified and were arbitrarily and unilaterally arrived at by the Counsel. The proposed deductions contravene the Retirement Benefits Act and the Pensions Act on the permissible deductions. He also takes issue with the requirement that the amount be deposited in the respondents personal account.
6. The respondent has filed affidavit in response sworn on 29th August 2025. Her application dated 11<sup>th</sup> July 2025 included a prayer that pension be attached to secure the fees for the minor until she completes her education ( upto grade 12) in 2028. This is equal to the disputed sum of Kshs 8,032,480 as computed in paragraph 7 of her affidavit.
7. The bulk and forward payment of the amount is necessary as the applicant is a perennial defaulter and in the past the minor has been locked out of class. It is in the Child's best interests that the orders are upheld.
8. The Application was canvassed via written submissions.

### **Applicant's Submissions**

9. The Applicant frames the following as the issues for determination-
  - a. Whether the Appellant/ Applicant has satisfied the threshold for grant of stay of execution pending appeal under Order 42 Rule 6 of the Civil procedure Rules.
  - b. Whether this Honourable Court should vary and/ or suspend the attachment orders and in substitution adopt a structured, child focused school fees payment plan with fees paid directly to the school.
10. It is submitted that unless stay is granted the applicant will suffer substantial loss and reference made to the decision in SK v GNK [2025] KEHC 11259 (KLR)
11. Reference is made to the decision in LDT v PAO [2021] eKLR for the assertion that it is in the Child's best interests that the orders sought are granted.
12. On the 2<sup>nd</sup> issue it is submitted that it is in the Child's interest that the orders be varied as his circumstances have changed and he can only provide in accordance with his means reference is made to the decision in AWM v JWW [ 2022] Eklr in support of that proposition and the decisions in CIN v JNN [2014] Eklr, M.O.A v H.A.O [2021] Eklr and S.K.W. v M.W.I [2015] eKLR

### **Summary of Respondent's Submissions**

13. The respondent frames the following as the issues for determination-
  - a. Whether the Notice of Motion application dated 26<sup>th</sup> August 2013 is merited;
  - b. Whether the Appellant has satisfied the conditions for granting stay of execution of the orders of the Children Court order dated 23<sup>rd</sup> June 2023 (sic)
  - c. Whether the Appellant is deserving of the prayer of injunction and freezing of the respondent's account as prayed in prayer 3



- d. Whether prayer 4 amounts to res subjudice.
14. On the 1<sup>st</sup> issue it is submitted that the application does not comply with rule 3 of the High Court ( Practice and Procedure) rules and should therefore be dismissed outright.
  15. On whether or not the applicant should obtain stay of execution pending appeal, it is submitted that the applicant has not approached the court with clean hand and therefore the Court should not exercise discretion in his favour and reference made to the decision in DLK v CM [2020] Eklr
  16. It is submitted further that the applicant has not met the threshold set out in the case of Bhutt v Bhutt Mombasa HCCC No. 8 OF 2014 ( O.S.). It is submitted that there is a plethora of court decisions on undesirability of stayng maintenance orders and reference made to the decision in DOB V DMA [2021] eKLR , SLS v RA [2019] KEHC 10983 (KLR) and ANK v RNM [2024] KEHC 3469 (KLR)
  17. It is submitted that the Applicant should not get the orders sought as he has not approached the Court with clean hands, having failed to make concrete proposals on payment of the arrears and the school fees of the minor. It is submitted that the sought orders if granted will compromise the minors access to education.

### **Analysis and Determination**

18. I have considered the application before me, the Reply filed by the Respondent as well as the written submissions filed by each party. The Applicant is seeking orders mainly to stay the orders issued by the trial court on 8<sup>th</sup> August 2025 pending hearing and determination of the appeal herein.
19. It is important to note at the outset this matter concerns the welfare and well-being of the children and particulary the child’s right to education and the role of parents in securing that right.
20. *The Constitution* of Kenya 2010 provides at Article 53 (2) that:

(2) A child’s best interests are of paramount importance in every matter concerning the child.”
21. Likewise, the *Children Act* at section 8(1) provides as follows:-

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”. (Own emphasis)
22. The principles for granting stay of execution in children matters was well settled in the case of Bhutt v Bhutt Mombasa HCCC No. 8 of 2014, the Court held as follows:-

“In determining an application for stay of execution in cases involving children, the general principles for the grant of stay of execution Order 42 Rule 6 of the civil Procedure Rules, must be complemented by overriding consideration of the best interest of the child in accordance with “Article 53(2) of *the Constitution*.” (Own emphasis).
23. I reiterate that in making a decision on this matter this court will be guided solely by the best interests of the children. The issue for determination is how to ensure that the Child’s access to education is not hampered even as the parent exercises his constitutional right to appeal.
24. In exercising discretion in respect to stay of execution, Order 42 Rule 6(2) provide that the Court should be satisfied that:-
  - a. The applicant will suffer substantial loss if a stay is not granted;



- b. The application for stay has been brought without undue delay; and
  - c. The applicant has provided security for the due performance of the decree.
25. In the case of Kenya Power & Lighting Company Limited v Esther Wanjiru Wokabi, Civil Appeal No 326 of 2013 it was stated that:-

“to my mind, the courts discretion in deciding whether or not to grant stay of proceedings as sought in this application must be guided by any of the following three main principles;

- a. Whether the applicant has established that he/she has a prima facie arguable case.
  - b. Whether the application was filed expeditiously and
  - c. Whether the applicant has established sufficient cause to the satisfaction of the court that it is in the interest of justice to grant the orders sought”.
26. I have considered the memorandum of appeal and I am of the view that the appeal lodged herein is arguable. It is not disputed that there is a parental responsibility agreement whereunder the appellant has committed to provide for the school fees and school related expenses of the minor. It is not disputed that on occasion the child has had to stay out of class on account of non-payment of her school fees. The appellant will have an opportunity to challenge the approach taken by the respondent on how to secure the fees for the minor in her remaining years at high school at the appeal. At this stage what I am required to do without embarrassing the appeal is to grant a conditional stay that safeguards the best interests of the minor, which at this stage means the payment of her tuition and maintenance as per the parental responsibility agreement that is in force.
27. Accordingly the final orders will be
- a. stay is hereby granted on condition that the appellant clears with the school any arrears of school fees and further deposits the equivalent of school fees for two terms within the next 14 days. He will obtain the amounts due direct from the School office and pay the sum as per invoice raised by the school
  - b. The appeal will be expedited for hearing, the appellant to file and serve record of appeal within 30 days.
  - c. The Costs of this application will be in the cause
  - d. Mention on 5<sup>th</sup> November 2025 to confirm compliance and take further directions

It is so ordered

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 16<sup>TH</sup> DAY OF OCTOBER, 2025.**

**P. M. NYAUNDI**

**JUDGE**

In the presence of:

Fardosa Court Assistant

Ms. Lynn Nganga for Respondent



Ms. Kariuki Owese for Applicant

