



**SKC v WAA (Civil Appeal E069 of 2025)
[2025] KEHC 14626 (KLR) (Family) (16 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14626 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**FAMILY
CIVIL APPEAL E069 OF 2025**

**PM NYAUNDI, J
OCTOBER 16, 2025**

BETWEEN

SKC APPLICANT

AND

WAA RESPONDENT

RULING

1. The applicant and the respondent are the biological parents of the minors subject of the suit in Nairobi Children’s Case Number E776 of 2023. From the record it appears that parties entered a consent the terms of which included that the Appellant would pay school fees and school related expenses. Subsequent to the consent, the Respondent filed a Notice to Show Cause dated 19th January 2024 seeking orders to compel the Applicant to meet the children’s transport costs as directed in the Ruling dated 14th August 2023 which was the basis of the consent.
2. Parties were ordered to file their affidavits of means and submissions. On 24th March 2025, the trial court delivered a ruling and issued the following orders;
 1. That the Defendant shall comprehensively cater for the minor’s school fees and school related expenses including transport.
 2. That the Defendant shall clear all the outstanding amounts on school transport as per the NTSC filed on 19th January 2024 within the next 30 days.
 3. That as biological parents, the parties are at liberty to mutually agree on change of school in the best interests of the minors.
 4. No orders as to costs.



3. The Applicant was aggrieved by this ruling and filed an appeal before this court. He also filed a Notice of Motion dated 8th May 2025 seeking the following orders:-
 1. Spent.
 2. Spent.
 3. That this Honourable Court be pleased to order a stay of the proceedings of the orders pursuant to a ruling delivered on 24th April 2025 in favour of the Respondent, in Chief Magistrate's Court Children's Case No. E776 of 2023 Milimani, by the Hon. A.W Macharia-Principal Magistrate pending the full hearing and determination of the Applicant's Appeal.
4. The Application was premised upon Order 22 Rule 22, 24 & 25, Order 42 Rules 4 and 6, Order 51 Rule 1 of the Civil Procedure Rules, 2010, Sections 3, 3A and 100 of the *Civil Procedure Act* and the Children's Act and all other enabling provisions of the law and was supported by the Affidavit of even date sworn by the Applicant.
5. The applicant avers that his former advocates did not inform him the effects of the consent order issued by the trial court on 22nd August 2023. He argues further that he is aggrieved by the orders issued on 24th April 2025 by Hon. A.W Macharia, Principal Magistrate on the ground that his financial capabilities were ignored by the court. He averred that the Respondent lives in their matrimonial home which is jointly registered in both their names. He entered into a mutual agreement with the Respondent that she pays mortgage (Kshs. 72,000) while he pays school fees for the children. The Respondent did not pay the mortgage and the house is subject to an auction sale.
6. He argued that the Respondent was dishonest about her earnings and did not disclose to the trial court the payments on the mortgage. He stated that he earns a net salary of Kshs. 320,000/= . School related fees and his living expenses amount to Kshs. 488,750 which is way above his net salary which forces him to borrow money to compensate for the inadequacies. He argues that since the Respondent earns more than him, he proposed that she should cater for school transport, school trips and school uniforms. That the trial court disregarded the true financial statement of the Respondent. He argues that he has an appeal that raises triable issues with high chances of success and if the orders of stay are not issued, the appeal will be rendered nugatory. He averred that if he forced to provide above his means he will be inclined to withdraw the children from the schools and lifestyle they are used to thereby causing more emotional anguish. That the application has been done in good time and without unreasonable delay.

Response.

7. The Respondent filed an undated Replying Affidavit. She averred that the orders of 24th April 2025 gave the parties liberty to negotiate and agree on the change of schools. That the children have since been transferred to cheaper schools but the schools are far from where she lives. She accused the Applicant of choosing the schools without considering the distance between the schools and where the children live. Therefore, she should not be compelled to pay school transport. She avers that the Applicant can still change the schools for the minors to reduce the distance. Arguing that the school fees in the current schools is more affordable than the former school, the Applicant should be able to cater for transport without struggling.
8. She avers that the trial magistrate considered the affidavit of means in both instances when the court delivered the ruling on 14th August 2023 and on 24th April 2025. She deponed that the Applicant blames his former advocates for not informing him of the consequences of entering a consent and filing it in court. Instead, the the applicant should have appealed on the consent judgement entered in the lower court the orders of Hon.M.W .Kibe. The Respondent denied entering into an agreement with



the Applicant on payment of mortgage. She avers that she has been paying the mortgage but she is financially overwhelmed and the house has been put up on auction.

9. She avers that the only financial responsibility of the Applicant is only school fees and school related expenses. On her part, she meets shelter, food, clothing, medical cover and general care for the children. According to her, she is shouldering more responsibility than the Applicant and it will be unfair for her to take up the applicant's responsibility.
10. She argued that the application are frivolous, and a glaring abuse of the court process. It fails to meet the threshold for granting the Orders sought. As held in Civil Appeal 139 of 2019, MOA v HAO [2021] eKLR by Hon. Justice J. N. Onyango: "Children's matters or needs should not be used to punish one parent at the comfort of another parent. Children should be viewed as a blessing to parents, not a curse. To overburden one parent at the comfort of another will be tantamount to punishing the overburdened parent. She urged the court to dismiss the application.

Applicant's Submissions.

11. The Applicant stated that Section 94 (1) of the *Children Act* stipulates factors that guides the court when making an order for financial provision for maintenance of a child. He sought to rely on the decisions in In the matter of RAS & RDS [2019] eKLR, HWN vs. GKC Children Appeal No. 3 of 2018, [2018] eKLR and TMM v JMM [2019] eKLR, where the courts stated that the earning capacity of both parents should be analyzed before an order for maintenance in made. In this matter, the Applicant argued that the trial magistrate ignored the facts presented about his financial distress while the Respondent on the other hand did not reveal her true earnings. He urged this court to conduct a proper inquiry and assessment into the financial ability of both parents and arrive at reasonable contributions without overburdening any of the parents.
12. Relying on the decision of SKM v MWI [2015] KEHC 2078 (KLR), he argued that the current maintenance orders are oppressive and there is need to review the same to enable him maintain the children for long.
13. He argued that he has an appeal that is arguable and that given a chance, he will argue the appeal. His right to be heard was overlooked by the trial court when his application for review was not allowed.

Respondent's Submissions

14. She sought to rely on Article 53(2) of *the Constitution* and Section 8 of the Children's Act, which state that children best interest are paramount and should be considered before any decision is made. She also relied on the decision of DOB v DMA [2021] eKLR. The respondent submitted that stay in this case would negatively impact the education of the children. She argued that educational needs are non-negotiable and cannot be held at abeyance. Relying on the decision of LDT v PAO [2021] eKLR, it was her submission that the applicant has not demonstrated that the stay of maintenance will be beneficial or the minors will suffer if the stay is not issued.
15. The Respondent argues that the Applicant's affidavit of means is inconsistent, has inflated figures and there is no evidence of a loan that he claims he is repaying or that he lost business. She argues that the Applicant did not challenge the consent judgment in the trial court or have it set aside.
16. The Respondent argues that the Applicant only pays school fees and school related expenses. On the other hand, she provides shelter, food, clothing, medical cover, utilities and general care as the parent with custody of the children. She argued that she bears a greater burden than the Respondent which is overburdening her. That although parental responsibility is equal, the Applicant has not demonstrated



his inability to contribute transport costs. she relied on the decisions of PAOO v EAA [2024] KEHC 8001(KLR) and MOA v HAO [2021]eKLR .

Analysis and Determination.

17. I have considered the application before me, the Reply filed by the Respondent as well as the written submissions filed by each party. The issue for determination is whether the Court should grant stay of proceedings as sought pending the hearing and determination of the appeal.
18. As this matter concerns the welfare and well-being of the children, I am bound by the Constitutional imperative at Article 53 (2) of *the Constitution* of Kenya, 2010 that states:
 - (2) A child’s best interests are of paramount importance in every matter concerning the child.
19. 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)
20. The principles for granting stay of execution or proceedings 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).
21. I reiterate that in making a decision on this matter the primary consideration is the best interests of the children, which of necessity will trump the wishes and desires of the parents and treat them as secondary.
22. 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.
23. 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.
24. The applicant has not demonstrated the harm that the Child will suffer. It has been reiterated and is well established that Court orders are not suggestions. In Teachers Service Commission versus Kenya National Union of Teachers & 2 others [2013] eKLR the Court stated-



A court order is not a mere suggestion or an opinion or a point of view. It is a directive that is issued after much thought and with circumspection. It must therefore be complied with and it is in the interest of every person that this remains the case. To see it in any other way is to open the door to chaos and anarchy and this Court will not be the one to open that door. If one is dissatisfied with an order of the court, the avenues for challenging it are also set out in the law. Defiance is not an option

25. The appellant wishes to wiggle out of the Consent on the basis he did not fully appreciate the consent in Court and its consequences especially because he does not have the means to comply. That is the issue he will canvass at the appeal. Right now he seeks to persuade the Court that it is in the interests of the Children to stay the order requiring that he pays school transport pending the determination of his appeal. Even during the pendency of the appeal the children will need to be transported to and from school.
26. He does not offer an interim measure, it is his position he should not be required to pick this tab until the appeal is determined, what happens to the children in the interim? I am not persuaded that his appeal will be rendered nugatory especially when weighed against the prospects of the children missing school as no provision has been made for their transport.
27. For this reason, the application is denied.
28. The Applicant will serve Record of Appeal within 45 days. Mention on 21st January 2026 to confirm compliance and take directions.
29. On account of the relationship between the parties there shall be no order as to costs.

SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 16TH DAY OF OCTOBER 2025.

P. M. NYAUNDI

JUDGE

In the Presence of

Fardosa Court Assistant

