



**DM & 2 others (Suing through JLG) v SKM (Children's Case 52 of 2016) [2024] KEMC 161 (KLR) (6 June 2024) (Ruling)**

Neutral citation: [2024] KEMC 161 (KLR)

**REPUBLIC OF KENYA  
IN THE NAKURU LAW COURTS  
CHILDREN'S CASE 52 OF 2016  
PA NDEGE, SPM  
JUNE 6, 2024  
IN THE MATTER OF THE CHILDREN'S ACT 2022  
AND  
IN THE MATTER OF DM, RW & JP  
(MINORS)**

**BETWEEN**

**DM, RW & JP (SUING THROUGH JLG) ..... PLAINTIFF**

**AND**

**SKM ..... DEFENDANT**

**RULING**

1. Before me is a Chamber Summons application dated 14/03/2024 brought pursuant to Article 53(2) of the Constitution of Kenya, 2010, Section 101 of the Children's Act, Section 1A, 1B and 3A of the Civil Procedure Act and all other enabling provisions of the law. In the Application, the plaintiff is seeking the following substantive orders:
  - a. That the Respondent be ordered to appear in court to show cause why his savings should not be attached to cater for the subjects herein as per the orders issued by the court on 04/04/2017.
  - b. That this honorable court makes orders directing the Respondent's bank account no. 0100398418200 with Standard Chartered bank be frozen and his savings be appropriated to reimburse the expenses incurred by the Applicant and provide for the subjects medical expenses, educational expenses, travel expenses and any other incidental expense as shall be directed by court.



- c. That in the alternative and without prejudice to the foregoing, this Honorable Court be pleased to order the Respondent to appear in Court to show cause why he should not be committed to civil jail for failure to comply with the orders issued on 04/04/2017.
  - d. That this Honorable Court be pleased to make such further orders as it may deem fit and just to issue.
  - e. That the costs be borne by the Respondent.
2. The Application is premised on the annexed affidavit of the plaintiff, being the minors mother, and the 9 grounds on the face of it, mainly that: -
- a. The Applicant and the Respondent are the biological parents of the subjects herein who have attained majority age and are now in pursuit of higher education.
  - b. On or around 2016, the Applicant herein instituted the suit herein vide Plaint on behalf of the subjects who were then minors.
  - c. The Applicant and the Respondent herein have been sharing parental responsibility as provided for under article 53 of the Constitution of Kenya 2010 and as directed by the court via the orders issued on 04/04/2017.
  - d. The suit herein is still pending in court as the Respondent has ignored and/or neglected to comply with the orders issued on 04/04/2017 and is in contempt.
  - e. The Respondent/ Defendant herein has played footloose and with the court since the issuance of orders dated 04/04/2017 resulting in the minors herein acquiring majority age which is tantamount to an abuse of the court process and a mockery of the court's authority and powers.
  - f. The Respondent has refused and/or failed and/or neglected to cater for medical expenses, education expenses and incidental costs for S. W., R. W., and others resulting in a risk of dropping out and increased suffrage for R. W.
  - g. The plaintiff/applicant has been meeting the parental responsibility upon default by the Defendant but is currently unable to continue with the same as it has become extremely burdensome and she is facing challenges to cater for the subjects herein solely.
  - h. Unless compelled by this Honorable Court, the subjects herein shall continue to suffer and experience delays in their progression in life as compared to their peers.
  - i. It is in the best interest of the subjects herein that the orders sought herein are granted.
3. The application was served on the respondent who filed his Replying Affidavit sworn by himself at Nairobi on 22/03/2024 wherein he averred that he is aware of the court order dated 04/04/2017. That he is also aware that court orders and decrees are issued after the court has carefully examined and considered the evidence before it. That this matter is principally touching on the execution of a decree on parental responsibilities and obligations over their children. That provisions of a child's education, medical care and shelter is a statutory and constitutional responsibility, which obligation he has diligently performed to the best of his ability. That he has at all material times endeavored to perform his parental responsibilities, and that he has since appealed the Ruling of Hon. Y. I. Khatambi as the said ruling did not detail the extent to which he abdicated his parental responsibilities. That the appeal is active and pending before the High Court and it is therefore only fair and just that the issues raised therein be ventilated by parties before the orders herein can be granted. That he is aware that J. W.



is still of tender years of 11 years and was moved to boarding section without his knowledge/ consent by the applicant herein, but that he has nevertheless endeavored to pay for her school fees and related expenses without fail, a fact which is evidenced by the fees payment and WhatsApp conversation with the applicant, which he attached as annexure SK-3. That as per orders of 04/04/2017, the applicant was ordered to pay living expenses related to those that were no in boarding school and shifting the minor to a boarding school for him to cater for the boarding charges and related boarding expenses amounts to shifting the burden to him. That he has always performed his parental responsibilities and has at all times paid school fees and school related expenses for J. W., as ordered by the court, and this application is made in bad-faith. That he is a holder of an NHIF always updated with all his children as beneficiaries hence the children can access any medical facilities in case of admission as well as selected credited outpatient facilities and on top of that, his employer has taken out a medical scheme to which he has added S. W. and J. W. as his beneficiaries, and that at no material time has the applicant sought his consent for approval of a medical claim, if any. That the best interest of a child are superior to the wishes of the parent and they incorporate not just physical comfort of the child but welfare of the child in widest sense. That the application before court amounts to contempt of court proceedings which intends to punish a person who willfully and mala fides indulge in acts which tend to undermine the authority, dignity and repute of the court. That the orders sought by the applicant herein cannot issue as he has deliberately obeyed the orders issued on 04/04/2017, by performing his parental responsibilities and he cannot in any way be regarded as a contemnor.

4. There was another Replying Affidavit filed by the Respondent herein, sworn by himself at Nairobi, on 12/04/2024. The same was however filed without leave of the court, and though the Applicant did not raise the issue, I do hereby strike it out from the records of the proceedings herein. It is also worth noting that neither of the counsel herein referred to it in their written submissions.
5. Parties disposed off the application by way of written submissions. The main points relevant to the application herein however came from the Respondent's written submissions. The Applicant's counsel in their submissions simply reiterated the contents of their application and supporting affidavit.
6. As to whether the applicant herein has laid out sufficient grounds to warrant an order for the freezing of the Respondent's account, learned counsel for the Respondent submitted that such an order can only be brought through garnishee proceedings as provided for in Order 23, Rule 1(1) of the [Civil Procedure Rules](#). Counsel further submitted that garnishee proceedings only apply to monetary decree and that there is no money decree obtained by the applicant in the instant case. That though the applicant has alluded to maintenance arrears she has not tabulated or generally proved the same. The Respondent insists that he has all along performed his parental responsibilities and there are no monetary arrears arising herein to warrant execution by way of garnishee proceedings as sought for herein.
7. On this, I agree, there is no money decree herein. The purported arrears have not been proved and/or accurately tabulated and this court cannot just assume the figures being thrown at it as arrears that should be executed for. Let me not comment much on the orders being executed herein as there is an active appeal pending before a superior court on the same. The substantive appeal was annexed as SK-2, and there is no indication that the same has been dismissed. That is the best forum where the enforceability or extent of the parental responsibility orders issued herein can be canvassed. Otherwise the attachments provided by the Respondent are sufficient proof on a prima facie basis that he has been meeting his parental responsibilities herein which as rightly averred, were not specified in monetary terms. There is even a WhatsApp conversation between him and the applicant herein which has not been controverted in any way. In the WhatsApp conversation, the parties herein are cordially discussing issues pertaining to their shared parental responsibilities towards the children herein. The same is



highly encouraged and do not depict an absentee or a dead-beat father as claimed in the application herein.

8. I thus find this application an abuse of the court process and/or unfounded and/or unnecessary and accordingly do hereby dismiss it. No orders as to costs as this is a children/ family matter and the parties are encouraged to always put the interests of the children herein first. Parties to continue consulting and communication with each other so as to take care of the children herein. The children who have since turn into adults are no longer children per se, and respect towards each other, including the parents herein is necessary. It is the responsibilities of both parties herein to guide their children as they transit into young adults. I do believe that proper parenting cannot be achieved when parties are always in a sate of acrimony where they often resort to court litigation and adjudication on matters that the parties themselves are discussing and should consult each other. Let me remind the parties herein that the new [Children Act, 2022](#), now includes children whose parents are I an unending litigation of maintenance are now considered to be in need of care and protection and litigation should therefore be the last point of call. As is happening herein, children are growing, and will not continue being adults forever. Therefore, fattening or thickening a court case file with endless applications and/or appeals in the guise of fighting for their interest might in the long term not be in their best interest.
9. This application be and is hereby dismissed.

**DATED, SIGNED AND DELIVERED AT NAKURU IN THE CHILDREN COURT THIS 06<sup>TH</sup> DAY OF JUNE, 2024**

**ALOYCE-PETER-NDEGE**

**SENIOR PRINCIPAL MAGISTRATE**

In the presence of;

Plaintiff<sup>2</sup> counsel: Karungu

Defendant's counsel: Kabene

Plaintiff: n/a

Defendant: n/a

Subjects: n/a

