



FKN v SSR (Children's Case E150 of 2023) [2023] KEMC 259 (KLR) (1 August 2023) (Judgment)

Neutral citation: [2023] KEMC 259 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
CHILDREN'S CASE E150 OF 2023
PA NDEGE, SPM
AUGUST 1, 2023**

BETWEEN

FKN PLAINTIFF

AND

SSR DEFENDANT

JUDGMENT

1. Article 53(1) of the *Constitution* of Kenya states that: 'Every child has the right (e) to parental care and protection, which includes equal responsibility of the mother and father to provide for the child whether they are married or not.' Child Maintenance in the form of financial provision is an aspect of this right to care and protection.
2. Having looked at the affidavits of means of both parties herein, I have established that as per the defendant's payslip for June, 2023 annexed as SS3, his net is Kshs 34,816.75. As per the consent judgment already entered herein, his direct financial obligation towards the children herein is Kshs. 13,333/= per month, going by his averment at paragraph 4 of his Affidavit of Means, the same being the school fees.
3. Whereas the defendant has averred that he has another young family, he has failed to state whether there are other children in the family. I will therefore presume that there are no other children in that family. I will deduct a third of his net earnings and preserve the same for his own use. The remaining two thirds will be pooled together with the plaintiff's two thirds, so as to take care of the two children herein.
4. The plaintiff's two thirds are Kshs. 27,320/=, which I add to the Defendant's Kshs 23,211/=, totalling to Kshs 50,531/= per month. The parents herein can therefore be taken to be able to collectively pool Kshs 50,531/= per month for the welfare and expenses relating to the welfare of the children herein. Now this amount needs to be distributed into two, which comes to Kshs 25,265.50 per parent. I will therefore deduct Kshs 13,333.33 per month fees paid by the defendant herein which leaves the defendant with approximately Kshs 10,000/= per month, which I do hereby apportion as his monthly



contributions for the remaining expenses herein, being food and other nutritional needs for the minors herein.

5. In addition to the consented agreement herein, I do therefore hereby enter judgment herein as follows: -
- a. The legal custody of the minors herein is granted to both parties herein, in equal measures. No party shall have a superior right, supervisory or otherwise, over the children herein, over the other.
 - b. The plaintiff shall have the actual custody of the minors, while the defendant shall have unlimited access in a manner as may be agreed upon by the parties
 - c. The Defendant shall provide for the school fees and school related expenses
 - d. The plaintiff to cater for shelter, clothing, nanny and utility bills
 - e. Both parties to provide for the medical needs of the minors through their respective medical insurance covers.
 - f. The defendant to pay Kshs. 10,000/= per month, and in a manner agreed upon by the parties, towards the food and related expenses to the minors herein.
 - g. Each party at liberty to provide for more than allocated herein, without seeking for compensation from the other.

DATED, SIGNED AND DELIVERED AT NAKURU IN CHILDREN COURT THIS 01ST DAY OF AUGUST 2023.

ALOYCE-PETER-NDEGE

SENIOR PRINCIPAL MAGISTRATE

In the presence of;

Plaintiff's Counsel: Kenda

Defendant's counsel: N/a

Plaintiff: Present

Defendant: Present

Minors: Absent

Kenda: With respect to the order b, we still hope to negotiate and agree with my colleague as to the terms of access. Kindly give us a nother mention date for recording of an agreement as to the terms.

