In re LAS (Minor) (Miscellaneous Application E140 of 2025) [2025] KEHC 14797 (KLR) (Family) (23 October 2025) (Ruling)

Neutral citation: [2025] KEHC 14797 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

FAMILY

MISCELLANEOUS APPLICATION E140 OF 2025

PM NYAUNDI, J

OCTOBER 23, 2025

IN THE MATTER OF: ARTICLES 10, 47, 48. 50(1), 53(2), 159(2), 165(6) & (7) AND 259 OF THE CONSTITUTION

IN THE MATTER OF: SECTIONS 8,11,121 & FIRST SCHEDULE OF THE CHILDREN ACT, CAP 141

IN THE MATTER OF: MILIMANI CHIEF MAGISTRATE'S COURT CHILDREN'S CASE NO. E831 OF 2020- AMB VERSUS MOS; AND

IN THE MATTER OF: LAS (MINOR)

BETWEEN

MOS .... APPLICANT

AND

AMB .... RESPONDENT

RULING

1. Vide Notice of Motion dated 12th May 2025, seeks the following orders-

   a. Spent

   b. Spent

   c. This Honourable Court be nad is hereby pleased to exercise its supervisory jurisdciation over the Magistrate's Court by calling for, and or examining the proceedings , orders and directions in Children Case No. E831 of 2020- AMB v MOS for purposes of satisfying itself of the propriety, regularity and correctness of the said proceedigs, orders and or directions.

d. Upon examining the aforesaid proceedigs, orders and directions, the Honourable Court be and is hereby pleased to issue such orders and / or directions as are just and expedient in best interest of the minor in question.

e. The Court be and is hereby pleased to set aside and / or quash the warrants of arrest issued by the Magistrate's Court (Hon. Elizabeth Muiru- PM) ON 11TH December 2025

f. Costs of the Application be provided for.

2. The application is supported by the affidavit of the applicant sworn on even date. He and the respondent are the biological parents of the minor. Whereas he had earlier undertaken to pay the fees of the minor, he is now unable to meet that commitment as his financial circumstances have changed and the respondent has been instrumental in blocking his stream of income.

3. The respondent has moved to execute the judgment of 20th July 2023 and he is aggrieved by the courts decision to allow the Notice to show cause dated 10th December 2024 ex parte.

4. He challenges the ex parte orders on the basis that they failed to consider his income and the fact that he has 4 other children he supports, secondly it is not a debt owing to the respondent but rather to the school and recoverable by the school not the respondent. His imprisonment is not in the best interests of the children.

5. He avers that the Court did not exhaust other options available apart from his committal to civil jail, the decision to commit him to civil jail is disproportionate and onerous on him. The orders violate clear constitutional provisions and contravene principles of fairness, due process and natural justice.

6. The Respondent opposes the application and has sworn replying affidavit on 28th August 2025. She avers that the Application is incompetent as it is evident that it is an appeal from the decision of the trial court. Further it is presented prematurely as the matter was yet to be heard inter partes.

7. She avers that the respondent has failed to comply with the orders of the Court, thus jeopardizing the Child's access to education. She avers that the respondent has actively frustrated the implementation of the judgment. Subsequent to the filing of the application in Court, the trial Court heard the application and in orders of 12 th August 2025 has granted her sole custody of the Child. The respondent continues to disregard Court orders.

8. The Applicant elected not to file submissions. The respondent's submissions are dated 30th September 2025. The Respondent frames the issues for determination as-

a. Whether the Application was filed prematurely;

b. Whether this Court can exercise its supervisory jurisdiction over the magistrate's Court in the circumstances and if yes, whether the Applicant has made out a case for quashing of he warrants of arrest issued against him.

c. Whether the application herein amount sot an appeal against the decision of the magistrates Court

d. What should be the order on costs

9. On the 1st issue, the Applicant raises the issue as to whether there is any utility in granting the prayers sought as the application that the applicant sought to stall was subsequently heard by the trial court and orders issued. It is further submitted that this is a camouflaged appeal and the applicant has not laid a basis for this court to exercise its supervisory jurisdiction over the trial court.

10. It is submitted that the facts of the case do not lend themselves to this Court exercising supervisory jurisdiction over the trial court and this is a veiled appeal that should not be entertained. On account of the foregoing it is submitted that the Respondnet should pay costs.

Analysis And Determination

11. Having considered the pleadings herein, submissions filed and relevant law, the issues for determination are-

    a. Whether the Court should exercise its Supervisory Jurisdcition pursuant to Section 165 (6) and (7) of the Constituion of Kenya

    b. Who should pay costs?

14. On the 1st issue, the scope of the Court's powers in exercise of the Supervisory mandate has been the subject of numerous judicial decisions. One such decision is Ngugi v Republic [2023] KEHC 22493 (KLR) in which Olel J cited with approval the High Court of Malaysia in Public Prosecurtor v Muhari Bin Mohd Jani and Another [1996] 4 LRC 728 at 734, 735 where the Court stated-

> "... The object of revisionary powers of the High Court is to confer upon the High Court a kind of "paternal or supervisory jurisdiction" in order to correct or prevent a miscarriage of justice. In a revision the main question to be considered is whether substantial justice has been done or will be done and whether any order made by the lower court should be interfered with in the interest of justice.....If we have been entrusted with the responsibility of a wide discretion, we should be the last to attempt to fetter that discretion... This discretion, like all other judicial discretions ought, as far as practicable, to be left untrammeled and free, so as to be fairly exercised according to the exigencies of each case."

15. The Judge then proceeded to summarise the boundaries of that power-

> "[7] ... What this court is called upon to determine is the legality, correctness or propriety of the sentence handed down by the trial court. In order to exercise that power, the court must be satisfied that the trial court acted upon wrong principles or failed to consider some fundamental principles...

16. In the case of Rana Auto Selections Ltd & 2 others v Kenya Revenue Authority & another (Judicial Review Application 9 of 2020) [2021] eKLR, Mativo, J. (as he then was) states as follows:

> "Supervisory jurisdiction refers to the power of superior courts of general superintendence over all subordinate courts. Through supervisory jurisdiction, superior courts aim to keep subordinate courts within their prescribed sphere, and prevent usurpation. In order to exercise such control, the power is conferred on superior courts to issue the necessary and appropriate writs. This power of superintendence is conferred by article 165 (6) of *the Constitution*. As was pointed out by Harries, C.J. in Dalmia Jain Airways Ltd. v Sukumar Mukherjee 1953 SC 58, this power is to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors. This power involves a duty on the High Court to keep the inferior courts and tribunals within the bounds of their authority and to see that they do what their duty requires and that they do it in a legal manner. But this power does not vest the High Court with any unlimited prerogative to correct all species of hardship or wrong decisions made within the limits of the jurisdiction of the Court or Tribunal. It must be

restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principle of law or justice, where grave injustice would be done unless the High Court interferes. As the Supreme Court of India stated unless there is grave miscarriage of justice or flagrant violation of law calling for intervention, it is not for the High Court under article 165 (6) of *the Constitution* to interfere."

17. From the long chain of litigation in this matter, it is clear that the lower Court being satisfied that the Applicant failed to comply with he judgment, issued the warrants of arrest, all in the best interests of the child herein; the right to a fair hearing for the applicant was not violated. The applicant has not demonstrated that there exists a grave dereliction of duty and flagrant abuse of fundamental principle of law or justice by the lower court such that the High Court has to interfere.

    Article 53 (2) of *the Constitution* of Kenya 2010 provides that:

    (2) A child's best interests are of paramount importance in every matter concerning the child.

    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".

18. In conclusion, the High Court's supervisory jurisdiction under Article 165(6) and (7) of *the Constitution* is not a tool to correct every error or adverse decision made by subordinate courts. It is to be exercised sparingly and only in cases involving a grave miscarriage of justice or abuse of judicial authority. In the present case, the Applicant has failed to demonstrate any such dereliction of duty or abuse by the Magistrate's Court. The issuance of the warrant of arrest was a lawful consequence of continued non-compliance with court orders regarding the child's school fees a matter directly affecting the best interests of the child, which remains paramount under Article 53(2) of *the Constitution* and Section 8(1) of the *Children Act*. As such, there is no legal or factual justification for the High Court to invoke its supervisory jurisdiction in this matter. It follows therefore that there is no basis upon which I would vacate the orders of the trial Court

19. It is evident to me that the applicant moved to the High Court with this application with the hope that he would interim orders that would delay the need for him to respond to the application that was live before the trial court. He has not responded to the charge that he has disregarded the order requiring him to pay fees for the minor and surrender the minor's passport to the respondent. It is only a recklessly bold litigant that approaches the Court for relief while at the same time treating Court orders as suggestions that he has the discretion not to comply with.

20. To litigants like him the Court is obligated to remind that it does not tolerate applications that are an abuse of Court process. He cannot show up before the Court claiming that compliance with a Court Order will occasion a violation of his constitutional rights and his non-compliance is occasioning the violation of the rights of a child. His reliance on Article 159 (2) of *the Constitution* and the Oxygen principles of the *Civil procedure Act* will provide him no succour when it is the Court's observation that he is non compliant with existing Court orders. There is no shelter for his ilk within the precints of the Court.

21. 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

22. On account of the foregoing the application is dismissed with costs.

23. Having observed that the application is an abuse of court process, I find on the authority of the Supreme Court decision in Rai & 3 others v Rai & 4 others [2014] KESC 31 (KLR), this is an appropriate case for costs to follow the event. Accordingly the application is dismissed and costs of Kshs 40000 awarded to the Applicant payable within 30 days.

SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 23RD DAY OF OCTOBER 2025.

P. M. NYAUNDI

JUDGE

In the Presence of

Fardosa Court Assistant

No appearance by parties