



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**RMM v JNN (Civil Appeal E131 of 2025)
[2025] KEHC 14860 (KLR) (Family) (23 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14860 (KLR)

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

**FAMILY
CIVIL APPEAL E131 OF 2025**

**PM NYAUNDI, J
OCTOBER 23, 2025**

BETWEEN

RMM APPLICANT

AND

JNN RESPONDENT

(Being an Appella from the Ruling and Order of Principal MAGISTRATE Court (Honourable Jackie Kibosia, P.M) of the Magistrate’s Court of Kenya at Nairobi County Delivered on 31st July 2025 in Milimani Magistrate’s Court Children’s Case No. 1049/2012 in the matter of J.I (minor))

RULING

1. This ruling is in relation to two pending applications. The application of the applicant dated 22nd August 2025 and that of the Respondent dated 5th September 2025. The Notice of Motion dated 22nd August 2025 is presented under Sections 99 and 141 of the Children’s Act, Section 1A, 1B, 3, 3A and 63 (e) of the *Civil Procedure Act* and Order 42 Rule 6, Order 22 Rule 22 of the Civil procedure Rules. The application seeks orders that-
 - a. Spent
 - b. Spent
 - c. Spent
 - d. That there be a stay of execution of the Ruling and Order of the Children’s Court (Hon. Jackie Kibosia P.M.) given on 31-7- 2025 in Milimani MCCC No. 1049/ 2012 and all consequential proceedings arising therefrom pending hearing and determination of the appeal herein.
 - e. That costs of this Application be provided for.



2. The Application is supported by affidavit of the applicant sworn on even date. The Applicant is aggrieved by the decision of the Court to set aside the Consent Order dated 27th September 2021 and reinstate the judgment that had been delivered on 29th March 2018.
3. It is averred that the Court misdirected itself on the law in setting aside the consent order and directing that the parties revert to the terms of the judgment of 29th March 2018. It is averred the respondent, armed with this order proceeded to unilaterally transfer the Child to a different school that is costlier than the school the child was in previously. The school fees is beyond the means of the applicant. The applicant avers that it is in the interests of the child that the application be allowed.
4. The Respondent's notice of Motion is dated 5th September 2025. It is presented under section 3, Article 53(2); Sections 8,9, 13 92), 31 , 91 and 95 of the Children Act; Sections 1A, 1B and 3A of the Civil Procedure Act and Order 42 Rule 6 and 51 rule 1 of the Civil procedure Rules. The Orders sought are that-
 - a. Spent
 - b. Spent
 - c. Spent
 - d. Spent
 - e. Spent
 - f. That pending the hearing and final determination of the appeal herein the Honourable Court be pleased to reinstate the orders issued in Milimani CMCC No. 1049 of 2012 Richard Miano Maina – Versus Jackline Ngendo Nganga
 - g. That the costs of the application be provided for.
5. In her affidavit sworn on 5th September 2025 in support of the Application, the respondent avers that the court correctly applied the law in reviewing the Consent order as the consent was entered under duress and she did not have the money to pay the tuition of the minor. She implores that it is in the interests of the minor that the orders staying the execution of the orders issued on 31st July 2025 be vacated. She states that the Applicant should provide for the Child at the same level as his other children and should not discriminate against the minor herein.
6. The Applicant has sworn a further affidavit on 23rd September 2025 in which he rebuts the averments of the respondent. The Respondents supplementary affidavit sworn on 2nd October reiterates her earlier averments.
7. The Application was canvassed via written Submissions.

Summary Of Applicant's Submissions

8. The applicant frames the following as the issues for determination-
 - a. Whether this Court should grant stay of execution of the ruling and order of the trial Court and all consequential proceedings arising therefrom pending hearing and determination of the appeal herein.
9. It is submitted that the Application meets the legal threshold as articulated under Order 42 rule 6 of the Civil Procedure Rules. Further it is submitted that the orders sought are in the best interests of the Child. The authorities cited by the Applicant include *Flora Wasike v Destimo Wamboko* [1988]



eKLR (CA); CKK v CMMM [2016] eKLR; Bhutt v Bhutt (Mombasa HCCC No. 8 of 2014), Samvir Trustee Limited v Guardian Nak Limited Nairobi (Milimani) HCCC 795 OF 1997; Antonie Ndiaye v African Virtual University [2015] KEHC 6783 (KLR); National Industrial Credit Bank Ltd v Aquinas Francis Wasike & Anor [2006] eKLR and Absalom Dova v Tarbo Transporters [2013] eKLR; Atito v Atito[2025] KEHC 5713 (KLR)

Analysis And Determination.

10. In light of the foregoing, the issue for determination is whether the Court should grant stay of execution and proceedings as sought pending the hearing and determination of the appeal.

11. 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.”

12. 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)

13. 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).

14. 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.

15. 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.

16. 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.
17. The applicant is challenging the variance of a consent order and the subsequent variance of orders to his disadvantage coupled with unilateral decision of the respondent to change the school of the minor. The respondent on her part contends that it is in the interests of the minor that the impugned orders are implemented.
18. At this stage I am required to establish that; the applicant has an arguable appeal, that he will suffer irreparable loss if the stay is not granted, the application was presented without delay and that it is in the interests of justice that the orders sought are granted. All these to be weighed against the best interest of the child as the paramount concern.
19. The best interests of the Child in this instance are that the Child is able to access education while at the sametime ensuring that the applicant's right to pursue an appeal is not rendered nugatory. The essence of his appeal is that the ruling of the Court on 31st July 2025 is contrary to the provisions of the *Children Act* with regard to shared parental responsibility. That unless his appeal is allowed the child will suffer as he is unable to comply with the orders as he does not have the means to pay the tuition. The law provides that the stay is conditional on the applicant providing reasonable security to safeguard the interests of the minor
20. Having satisfied myself that the applicant has an arguable appeal and that in the interim I should give an order that safeguards the child's access to education, I direct that there shall be a stay of the orders of 31st July 2025 pending the hearing of the appeal.
21. The applicant to pay arrears of the monthly maintenance, if any within 14 days and to ensure that all payments of the monthly maintenance of Kshs 30000 are made timeously.
22. No prejudice shall be suffered by the Child as the respondent will continue to meet the educational expenses of the minor in the interim, while the applicant will pay the monthly maintenance and meet the medical expenses.
23. The hearing of the appeal will be expedited, the Appellant will file and serve record of appeal within 60 days.
24. Mention on 21st January 2026 to confirm compliance and take further directions on hearing of the appeal.
25. On account of the relationship between the parties there shall be no order as to costs.
26. Leave to appeal is granted. Party exercising their right to appeal to do so 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

Kinyanjui holding brief for Litoro for Appellant/Applicant

Nyagah for Respondent

