



REPUBLIC OF KENYA



KENYA LAW
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**ZWN (Suing on behalf of the minor AJN) v FM (Civil Appeal
E195 of 2025) [2025] KEHC 15035 (KLR) (24 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15035 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL APPEAL E195 OF 2025**

A MABEYA, J

OCTOBER 24, 2025

BETWEEN

ZWN (SUING ON BEHALF OF THE MINOR AJN) APPELLANT

AND

FM RESPONDENT

RULING

1. This is a ruling on the Motion by Notice dated 2/10/2025. The same is brought under the provisions of section 65 (1) (b) of the [Civil Procedure Act](#) and Order 42 rule 6 of the Civil Procedure Rules 2010.
2. The applicant seeks the following orders: -
 - a) Spent.
 - b) That the respondent do release the minor AJN to him immediately so that the minor can join [Particulars Withheld] School in Kisumu and continue with her education.
 - c) That this Honourable Court do issue an order directing the OCS Mihango Police Station, Utawala to accompany the appellant to the respondent's residence place and to ensure the minor is handed over to the appellant.
 - d) That this Honourable Court do issue an order allowing the OCS Mihango Police Station Utawala to effect an arrest against the respondent for failing to obey the court orders and be brought before this court for disobeying these orders."
3. The application is anchored on the grounds set out therein as well as the supporting affidavit sworn on 2/10/2025 by the applicant.



4. In response, the respondent filed a replying affidavit sworn on the 8/10/2025 in which she contended that she was opposed to the orders sought by the applicant of releasing the minor to him as well as those seeking her arrest.
5. That the implementation of the orders sought to be enforced by the applicant was hindered by logistical and safety concerns regarding the minor and the applicant's insistence on removing the minor from her custody without proper coordination or assessment posed emotional and psychological harm to the minor.
6. That she is not opposed to continuation of the minor's education but that the same must be done in a structured, safe and child sensitive manner preferably under the supervision of the Children's Officer of Kisumu and Nairobi.
7. I have considered the record.
8. On the 29/9/2025, this Court issued orders that had the effect of allowing the minor AJN to continue learning at [Particulars Withheld] School in Kisumu. The respondent was made aware of the said orders. From the record and evidence presented by the applicant, the respondent has failed to comply with the same.
9. In *Thuo v Njuru NBI CA 278 of 1998(CA) (UR)* quoted in *In Re A A (AN INFANT) 2003KEHC137(KLR)*, the Court of Appeal held that court orders must be obeyed until set aside. The respondent has not appealed against the orders of 29/9/2025 nor has she applied to vary or set them aside.
10. In *Shimmers Plaza Limited v National Bank of Kenya Limited (2015) eKLR*, when faced with the same scenario, the court had this to say: -

“We reiterate here that Court orders must be obeyed. Parties to whom such orders are made cannot be allowed to trash them with impunity. Obedience of Court orders is not optional, rather it is mandatory and a person does not choose whether to obey a court order or not. For as Theodore Roosevelt, the 26th President of the United States of America once said “no man is above the law and no man is below it; nor do we seek any man's permission to obey it. Obedience to the law is demanded as a right; not as a favour”
11. It should be recalled that, before making the orders of 29/9/2025, the Court had given the respondent an opportunity, three times to be precise, to respond and/or oppose the applicant's application. She deliberately neglected to either respond to that application and exhibited extreme lack of disinterest.
12. It was clear to this Court then that either the respondent was contemptuous of the Court's directions to respond to the application or she outrightly was disinterested with whatever befell the minors.
13. Based on the above authority, I find merit in the Motion dated 2/10/2025. The issues of the children's rights being paramount is not disputed. However, the Mother (the respondent) cannot be allowed to disobey the court orders willfully and hide under the umbrella of those rights. This Court really restrained itself before it made the subject orders and it made those orders as a last resort. Those orders have to be obeyed.
14. Accordingly, the Court makes the following orders: -
 - a. That the OCS Mihango Police Station Utawala does accompany the applicant to the respondent's residence place and to ensure the minor, AJN, is handed over to the appellant for here placement in [Particulars Withheld] School, Kisumu.



- b. That the respondent is in willful disobedience and is in contempt of the court order made on 29/9/2025.
- c. Consequently, the respondent does appear before this Court on the 28/10/2025 to show cause why she should not be punished for being in contempt of the orders of 29/9/2025.
- d. Each party to bear own costs.

It is hereby so ordered.

DATED AND DELIVERED AT KISUMU THIS 24TH DAY OF OCTOBER, 2025.

A. MABEYA, FCI Arb

JUDGE

