



**CSM v SKG (Family Appeal E014 of 2024)
[2025] KEHC 16081 (KLR) (5 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 16081 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
FAMILY APPEAL E014 OF 2024
RM MWONGO, J
NOVEMBER 5, 2025**

BETWEEN

CSM APPELLANT

AND

SKG RESPONDENT

(Appeal from the ruling of Hon. F. Kyambia, CM in Embu Magistrate’s Court Children Case No. E032 of 2021 delivered on 7th November, 2024)

JUDGMENT

The Appeal

1. The appellant filed a memorandum of appeal dated 26th November 2024 seeking that the appeal be allowed and costs of the appeal be awarded to her. The grounds of appeal are as follows:
 1. That the Learned Trial Magistrate erred in law and in fact by misdirecting himself that he had considered the documentary materials availed in terms of money paid to the school in terms of school fees yet the same (school fees) was not an issue raised by the Appellant in her application;
 2. That the Learned Trial Magistrate erred in law and in fact by misdirecting himself that he had considered the documentary materials availed in terms of money paid to the Appellant for school uniforms and also the Mpesa transactions of monies sent to the Appellant yet the Respondent did not provide evidence for the same;
 3. That the Learned Trial Magistrate erred in law and misdirected himself by deciding that the Respondent had paid school fees for the minor and even cleared the same yet the issue before the lower court was only on the purchase of school uniform needs as well as payment of school extracurricular activities for term 1 and 2 as opposed to school fees which had already been cleared by the Respondent;



4. That the Learned Trial Magistrate erred in law and in fact by misdirecting himself that the Appellant was making unreasonable demands beyond the Respondent's means, yet all the demands made were as per the mediation agreement on each party's obligations signed by both parties and adopted by the court;
5. That the Learned Trial Magistrate erred in law and in fact by misdirecting himself that the Appellant was making unreasonable demands beyond the Respondent's means in terms of the school extra-curricular activities, yet the same is part of the school programs and thus essential schooling/educational needs;
6. That the Learned Trial Magistrate erred in law and in fact by misdirecting himself that the Appellant was only bent on harassing the Respondent by making reference to previous rulings unrelated to the issue before the court;
7. That the Learned Trial Magistrate erred in law and in fact by misdirecting himself that the Appellant had on occasions reversed monies sent to her by the Respondent, without any evidence of such for the period in issue before the court;
8. That the Learned Trial Magistrate erred in law and in fact by considering the amounts paid by the Respondent as medical expenses (Kshs.21,000/=) after the filing of the Application, yet the same was not in issue or an issue raised by the Appellant;
9. That the Learned Trial Magistrate erred in law and in fact by misdirecting himself that the Appellant demanded payment for school extra-curricular activities which was beyond the Respondent's means yet there was a consent that was entered into by both parties on the 6th day of September, 2022 where the Respondent agreed to cater for all schooling needs, which had not been followed by the Respondent;
10. That the Learned Trial Magistrate erred in law and in fact by stating that the Respondent explained how he catered for the minor's medical expenses and that that was sufficient yet the Notice to Show cause was only in regards to payment of monies needed for various school uniform needs, monies for school extra-curricular activities and maintenance which was meant to be Kshs.10,000 monthly and had not been paid since September 2022 to 22nd May, 2024;
11. That the Learned Trial Magistrate erred in law and in fact by misdirecting himself that the Appellant has left parental responsibility to the Respondent alone yet it is the Appellant who stays with the minor and also there was a consent entered into by both parties on how to divide the responsibilities and in particular each other's roles;
12. That the Learned Trial Magistrate erred in law and in fact by misdirecting himself that Respondent did not abdicate on his parental responsibilities as per the mediation agreement yet as at 22nd May, 2024 the Respondent was in arrears of Kshs.210,000/= as maintenance;
13. That the Learned Trial Magistrate erred in law and in fact by stating that the Respondent had proved he is not in arrears yet in his Replying Affidavit dated 03rd July, 2024 he only annexed screenshots showing a transaction marked as 'SKG 4' which amounts to a total of Kshs.21,000/= only and which was sent after the Notice to Show Cause Application dated 20th May, 2024 had already been filed.



Background

2. The appellant filed a notice of motion dated 26th October 2021 seeking, inter alia, interim custody of the minor and that the respondent do pay her Kshs.40,000/= monthly as maintenance to cater for medical and school needs of their child and Kshs.54,000/= as upkeep for July-October 2021. The application was accompanied by a plaint of even date. Through it the appellant sought judgment against the respondent as follows:
 - a. That the legal and actual custody, care and control of the Minor EI be and is hereby granted to the Plaintiff until he attains the age of majority.
 - b. A declaration that the Defendant is duty bound to continue taking care, exercising and / or discharging his parental responsibility over the minor herein by providing a monthly maintenance as per the Affidavit of Means filed by the Plaintiff herein.
 - c. That the said monthly maintenance be reviewed upwards as circumstances change/dictate.
 - d. That the Defendant be ordered to provide a medical cover for the minor;
 - e. That the Defendant be ordered to take care of the minor's schooling and education related expenses.
 - f. That the Defendant be ordered to take out an educational policy for the minor.
 - g. That the costs of the suit be borne by the Defendant herein.
 - h. That this Honourable court be pleased to make further or other orders as it may deem fit to grant in the circumstances.
3. Through the plaint, the appellant averred that she was the primary caregiver of the child since birth and she had never abandoned the child. That it is in the best interest of the child that custody orders be made in her favour and that the respondent pays maintenance for the child.
4. The respondent filed a statement of defense conceding that the appellant indeed had full custody of the child. That he had been involved in providing tender care for the child and meeting the child's financial needs. He stated that some of the averments made in the plaint will violate his rights as a parent as the child is entitled to the care of both parents. That he was willing to meet the child's education needs and he should be the one to pick the school where the child goes. He stated that the minor is included in the appellant's medical cover. That his earnings have dwindled since the covid-19 pandemic.
5. The appellant filed a reply to defense in which she reaffirmed her statements in the plaint and challenged the averments made in the statement of defense.

Mediation

6. Following the filing of pleadings, the matter was, at some point, referred to mediation. The parties indeed resolved some issues and on 6/09/2022 they signed a mediation settlement agreement. The agreement was adopted by the court as a consent order vide a ruling delivered on 09th January 2023. In that mediation settlement agreement, the parties agreed: That the respondent would pay the appellant Kshs.10,000/= every month for upkeep of the child; That they would both equally share the child's medical expenses as they arose; and That the respondent would pay for all the medical needs of the child. The parties also agreed that the suit in Embu MC Children Case No. E032 of 2021 would be marked as closed.



Application dated 22nd May 2024

7. Subsequently, appellant filed a series of applications seeking different reliefs in the same file. All of them were entertained and determined by the trial court expeditiously. One of those applications is dated 22nd May 2024 and through it, the appellant sought for orders that the respondent be compelled to remit Kshs.11,500/= for purchase of school uniforms and Kshs.12,500/= for school fees for the minor and Kshs.210,000/= being maintenance for the child for a period of 21 months upto that point. She sought that the notice to show cause application be heard.

Replying Affidavit

8. The respondent opposed that application stating that he had met his obligations according to the mediation agreement. That he had been paying for the child's school expenses on time as they became due. He stated that the matter was marked as closed. He argued that the application was not properly before the court because the appellant did not seek or apply to formally re-open the case before filing the application.
9. Further, produced evidence that when the child needed corrective surgery, he facilitated the treatment locally and paid for all the expenses including sending the appellant money for upkeep when the child was hospitalized. Sometimes when he sent money to the appellant, she would return some of it. He termed the appellant as a vexatious litigant who is out to frustrate him. He stated that he has always fulfilled his obligations as ordered by the court and that the appellant is not acting in good faith by pursuing a notice to show cause against him since he has not refused to meet his obligations.

Ruling of the trial Court

10. On 19th September 2024, the trial court issued a notice to the respondent to appear before court to show cause why he had not complied with the conditions in the mediation settlement agreement which had been adopted as an order of the court. The respondent was heard and the court determined that he had complied with the order of the court. The court noted that parental responsibility applies to both parents as it is shared. In this case however, it was alleged that he had left it all to the respondent and she was making unreasonable demands. The Court was not persuaded that the respondent had abdicated his parental responsibility. The respondent was ordered to continue with his responsibility in accordance with the mediation settlement agreement and the notice to show cause application was dismissed.

Parties' Submissions in the appeal

11. The court directed the parties to file written submissions in the appeal. Only the appellant complied.
12. In her submissions, the appellant relied on the case of *Selle & Another Vs Associated Motor Boat Co. Ltd. & Others* [1968] EA 123 and urged the court to revisit the evidence and draw its own findings. She also relied on Article 53(2) of *the Constitution* and sections 8(1)(a), 31, 32 and 95 of the *Children Act* and argued that parental responsibility is the duty of both parents. Further reliance was placed on the case of *MOA v HAO* [2021] KEHC 12577 (KLR). It was the appellant's argument that the trial court did not address the issue of Kshs.210,000/= being arrears owed by the respondent in maintenance for several months. It was her case that the respondent ought to have been held accountable for the maintenance money through the notice to show cause application since he did not demonstrate that he had paid the said amount.



Issue for determination

13. The issue for determination is whether the appeal has merit.

Analysis and Determination

14. The court is required to revisit the evidence adduced before the trial court and make a finding. This was emphasized in the case of *Selle v Associated Motor Boat Co.* (supra) that:

“The appellate court is not bound necessarily to accept the findings of fact by the court below. An appeal to the Court of Appeal from a trial by the High Court is by way of a retrial and the principles upon which the Court of Appeal acts are that the court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular the court is not bound necessarily to follow the trial Judge’s findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally.”

15. The order of the court emanating from the mediation settlement agreement is to the effect that the respondent would pay the appellant Kshs.10,000/= every month as maintenance in addition to him catering for all the child’s school needs. Both parties were ordered to cater for the child’s medical expenses equally as they arose.

16. I have perused the record of proceedings in the trial Court. The Court at the time of adopting the Mediation Settlement Agreement noted that the appellant nevertheless had a complaint on the figures because circumstances had changed. The learned trial Magistrate stated:

“As at the signing of the agreement by the parties, the agreement becomes binding on the parties. If circumstances change even a minute after executing an agreement, the agreement becomes subject to another process to change the particulars of the agreement. So as far as this Court is concerned, and from the observations made above, the mediation agreement dated 6th September, 2022 is binding on the parties and is adopted as such by the Court.”

17. By the time the appellant was filing the application dated 22nd May 2024, she claimed that the respondent had defaulted in paying maintenance for 21 months, amounting to Kshs.210,000/=.

18. In response, the respondent produced copies of cheques made out towards school fees showing they were paid directly to the child’s school. The school fees expenses were cleared and he also produced a receipt from the school. In terms of school expenses, the respondent demonstrated compliance with the court order. What remained in question is the maintenance money at the rate of Kshs.10,000/= monthly since the date of the court order emanating from the mediation settlement agreement.

19. In this regard, the respondent produced cheques made out to the appellant for a total of Kshs.165,500/= and they are dated:

1. 29/11/21 for Kshs.25,000/=,
2. 14/03/22 for Kshs.30,000/=,
3. 20/07/22 for Kshs.20,000/=,
4. 22/12/2021 for Kshs.10,000/=,



5. 17/11/21 for Kshs.10,000/=,
 6. 07/06/21 for Kshs.13,500/=,
 7. 18/05/21 for Kshs.13,500/=,
 8. 14/04/23 for Kshs.13,500/=,
 9. 05/03/21 for Kshs.30,000/=
- Total Kshs.165,500
20. The respondent also produced copies of M-pesa messages showing that on 25th May 2024, he sent a total of Kshs.21,000/= to the appellant. There are other cheques paid to the respondents advocates for on-payment to the appellant on his behalf. In his statement to the court, he stated that he has a standing order with his advocates so that he pays the appellant's money on time through them. He reiterated that the mediation agreement was reached on 06th September 2022 and was adopted as an order of the court on 09th January 2023. The application in question was filed on 22nd May 2024.
 21. It is noted that the best interest of the child in question is always the paramount focus of the court as stipulated by Article 53(2) of *the Constitution* which provides:

“A child's best interests are of paramount importance in every matter concerning the child.”
 22. Further, Section 4(3) of the *Children Act* provides that:

“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.”
 23. This means that in everything that the court and the parties do, the best interest of the child should be the main objective to be achieved by the court or any party dealing with the child. Clearly the respondent has demonstrated that he has paid the child's school expenses and the same are up to date. The contentious issue remained that of maintenance at the rate of Kshs.10,000/= monthly. The appellant pleaded that the respondent had refused to execute his responsibility in that regard and that is why she moved the court for with an application for notice to show cause.
 24. The respondent was summoned to court and he re-asserted that he had been meeting his obligations as required by the court. He added that the appellant had been creating more and more demands outside the purview of the agreement reached and adopted by the court. He highlighted the fact that the court, in one of its many rulings, had acknowledged that the appellant sought to push the respondent to the wall with her unreasonable demands.

Conclusion and Disposition

25. That being said, from the evidence adduced, which has been considered, the respondent has demonstrated that he is fulfilling his end of the bargain and meeting his obligations as a parent. Article 53(1)(e) of *the Constitution* provides for parental responsibility as follows:

“Every child has the right to parental care and protection, which includes equal responsibility of the mother and father to provide for the child, whether they are married to each other or not;



26. With the foregoing in mind, and taking into account the best interest of the child, I do not see that the findings of the trial court are made in error in this case. As such, I see no reason to interfere with the trial court's determination.

27. Accordingly, I hold and find that the appeal must be and is hereby dismissed with no order as to costs.

28. Orders accordingly.

DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 5TH DAY OF NOVEMBER, 2025.

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R. MWONGO

JUDGE

Delivered in the presence of:

1. Morara for Appellant
2. Kimathi holding brief for Okwaro for Respondent
3. Francis Munyao - Court Assistant

