



FC v LR (Suing as Mother and as Next Friend of the Minors EC & GC) (Family Appeal E021 of 2023) [2025] KEHC 16002 (KLR) (6 November 2025) (Judgment)

Neutral citation: [2025] KEHC 16002 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
FAMILY APPEAL E021 OF 2023
HI ONG'UDI, J
NOVEMBER 6, 2025**

BETWEEN

FC APPELLANT

AND

LR RESPONDENT

SUING AS MOTHER AND AS NEXT FRIEND OF THE MINORS EC & GC

(Being an appeal from the Judgment of Hon. Kefa delivered on 15th November, 2023 in Nakuru Children's Case No. E271 of 2023)

JUDGMENT

1. This appeal arises from the ruling entered by the lower court on 15th November 2023. In the said suit, the respondent (who was the plaintiff) vide the plaint dated 21st September, 2023 prayed for judgment against the appellant (who was the defendant) for;
 - i. The defendant be ordered to contribute monies in exercise or discharge of his parental responsibility as this court may deem fit being maintenance for the issues of the union.
 - ii. That the defendant to provide food, medical, education and all educational needs for the subjects herein.
 - iii. The cost of this suit be borne by the defendant.
2. The impugned Judgment was entered in the interest of the child in the following terms;
 - i. The plaintiff is granted actual, legal and physical custody of the minor (sic).
 - ii. The defendant is granted access/visitation rights as may be agreed by both parties.
 - iii. The plaintiff shall cater for shelter and utility bills.



- iv. The defendant shall contribute Ksh 6,000 monthly for food and clothing which amount to be paid through Mpesa or the same to be deposited in the bank account of the guardian which should be provided to the defendant.
 - v. The defendant shall cater fully for school fees and accessories in a school he can afford.
 - vi. Each party to cater for their own costs.
3. The appellant being aggrieved by the said judgment lodged this appeal dated 22nd November, 2023 setting out the following grounds:
- i. That the learned trial magistrate erred and misdirected herself in law and in fact by issuing orders against the appellant and completely ignored the appellant's representation.
 - ii. That the learned trial magistrate erred and misdirected herself in law and in fact by issuing orders that suggests that parental responsibility is solely and largely the father's duty.
 - iii. That the learned trial magistrate erred in law and in fact by bestowing full parental responsibility to the father with minimal contribution by the respondent.
 - iv. That the learned trial magistrate erred in law and in fact by failing to consider the evidence adduced before court in its entirety and issuing orders that the appellant should pay the respondent maintenance of Kshs.6,000/= per month, he is also to cater for the minor's school fees and all educational needs and medical cover.
 - v. That the learned trial magistrate erred in law and in fact by failing to consider that the respondent herein has taken possession of the appellant's dairy business premises and enjoys all the proceeds alone which should cater for the minor's shelter and food.
 - vi. That the learned trial magistrate erred in law and in fact in failing to hold that parental responsibilities should be shared equally as per *the constitution*.
4. The appellant prayed that the appeal be allowed and the trial court's judgment be set aside in its entirety and the same be substituted with orders fair to both parties. Further that the respondent bears the costs of the appeal.
5. The Appeal was canvassed through written submissions.

Appellant's submissions

6. These were filed by Mwango Mandere & Company Advocates and are dated 10th July, 2025. Counsel gave a brief background of the case and identified three (3) issues for determination.
7. The first issue is whether the trial court considered the appellant's financial capacity in awarding the monthly maintenance amount. Counsel submitted that the appellant was willing and ready to support the minors although the sum of kshs. 6000/= is beyond his current financial means since he is paying school fees, medical cover and he was currently unemployed.



8. The court’s attention was drawn to sections 117 (1) and (3) of the *Children Act* which outline what the court should consider in determining the issue of maintenance. The decision in *JNM v NMM* [2021] eKLR stated thus:

“A parent should not be subjected to a burden that surpasses their means under the guise of faire a parental obligation. Maintenance must strike a balance between the needs of the child and the ability of the parent.”

9. See also *SMM v JIL* [2022] eKLR. Counsel urged the court to allow the appeal with no orders as to costs.

Respondent’s submissions

10. These were filed by the respondent in person and are dated 8th May 2025. The respondent identified one issue for determination which is whether the judgment delivered on 15th November 2023 fairly and justly apportioned parental responsibility in accordance with the law and the best interest of the minors. She submitted that the Children’s Act, 2022, particularly sections 31 and 32, places joint and equal parental responsibility on both parents, regardless of their marital status. That section 31 outlines the specific obligations parents owe to their children, including food, shelter, education, and medical care.
11. She further submitted that the trial court correctly prioritized the principle of best interests of the child as mandated by Article 53(2) of *the Constitution* and Section 8 of the Children’s Act. Thus, the court’s decision sought to ensure that the minors are adequately cared for by both parents within their means. She placed reliance on the decision in *CIN v JNN* [2014] eKLR, where it was held that parents cannot abdicate their responsibility on the basis of unstable income and that a parent must show commitment and effort to provide. She added that it was clear that she was doing her part and that her request for assistance was not based on negligence or avoidance, but necessity.
12. She further placed reliance on the decision in *SLM v DAM* [2018] eKLR, where the court held that the appellate intervention is only warranted where there is clear misdirection or misapprehension of facts or law. She stated that no such misdirection has been demonstrated by the appellant. She added that the trial magistrate evaluated both parties’ submissions and financial capacities and reached a fair and reasoned decision.
13. In conclusion, she urged the court to dismiss the appeal with costs and uphold the judgment of the trial court.

Analysis and determination

14. This being a first appeal, it is this court’s duty under Section 78 of the *Civil Procedure Act* to re-evaluate the evidence tendered before the trial court and come to its own independent conclusion considering the fact that it did not have the advantage of seeing and hearing the witnesses as they testified.
15. This principle of law was well settled in the case of *Selle v Associated Motor Boat Co. Ltd* (1968) 123 where Sir Clement De Lestang (V.P) stated that:

“An appeal to this Court from a trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put they are that this 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, this 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".

16. Having carefully considered the record of appeal, grounds of appeal, and both parties' submissions, I find the main issue for determination to be whether the appeal herein has merit.
17. The appellant contends that the learned magistrate erred in law and fact in directing that he pays a monthly maintenance sum of kshs.6,000/=. Further, that the trial magistrate failed to consider his financial capacity, obligations and current means as required under the applicable law. He added that he was willing and ready to support the minors although the sum of kshs. 6000/= monthly is beyond his current financial means since he was unemployed.
18. The respondent on the other hand argued that the trial court fairly and justly apportioned parental responsibility in accordance with the law and the best interest of the minors. Further, that the trial magistrate evaluated both parties' submissions and financial capacities and reached a fair and reasoned decision. That she had clearly showed that she was doing her part and that her request for assistance was not based on negligence or avoidance, but necessity.
19. As to what constitutes parental responsibility, Section 31 of the Children's Act provides as follows:
 - (1) In this Act, "parental responsibility" means all the duties, rights, powers, responsibilities and authority which by law a parent of a child has in relation to the child and the child's property in a manner consistent with the evolving capacities of the child.
 - (2) The duties referred to in subsection (1) include, but are not limited to—
 - (a) the duty to maintain the child and, in particular, to provide the child with—
 - (i) basic nutrition;
 - (ii) shelter;
 - (iii) water and sanitation facilities;
 - (iv) clothing;
 - (v) medical care, including immunization;
 - (vi) basic education; and
 - (vii) general guidance, social conduct and moral values;
20. As to what constitutes equal parental responsibility, Section 32 of the *Children Act* provides as follows:

Equal parental responsibility

 - (1) Subject to the provisions of this Act, the parents of a child shall have parental responsibility over the child on an equal basis, and neither the father nor the mother of the child shall have a superior right or claim against the other in exercise of such parental responsibility whether or not the child is born within or outside wedlock.
 - (2) A person who has parental responsibility over a child shall at all times have the duties, powers and responsibilities as are prescribed in this Act or any other written law.



- (3) A person with parental responsibility over a child shall not act in any way that contravenes any order of a court of competent jurisdiction made with respect to the child under this Act or any other written law.
 - (4) A person who has parental responsibility over a child may not relinquish or assign such responsibilities to another person.
 - (5) Nothing in subsection (4) prevents a person from making temporary arrangements, during his or her absence, to allow a fit person to exercise his or her parental responsibilities over a child for and on his or her behalf.
 - (6) The making of the temporary arrangements referred to in subsection (4) by a person shall not affect or limit that person's liability arising from his or her failure to exercise his or her responsibility under this section.
21. In view of the above, there is no doubt that parental responsibility is a joint and equal responsibility. Both parties herein are equally aware and do affirm that they have an equal task to support their children. This position is further amplified by Article 53 (1) (e) of *the Constitution* which provides that every child has a right to parental care and protection, which includes equal parental responsibility of the mother and father to provide for the child, whether they are married to each other or not.
22. Section 114 of the Children's Act stipulates factors that guide the court when making an order for financial provision for maintenance of a child as follows;
- Financial provisions by step-parents and presumptive guardian
- (1) The Court may make a maintenance order in respect of a child, including a child of the other parent who has been accepted as a child of the family notwithstanding the absence of an adoption order.
 - (2) Without prejudice to the generality of subsection (1), the Court shall consider all the circumstances of the case and be guided by the following considerations—
 - a. the income or earning capacity, property and other financial resources which the parties or any other person in whose favour the Court proposes to make an order, have or are likely to have in the immediate future;
 - b. the financial needs, obligations, or responsibilities which each party has or is likely to have in the immediate future;
 - c. the financial needs of the child and the child's current circumstances;
 - d.
 - e.
 - f. the manner in which the child is being or was expected to be educated or trained;
 - g. whether the respondent has assumed responsibility for the maintenance of the child and, if so, the extent to which, and the basis on which, he or she has assumed that responsibility, and the length of the period during which he has met that responsibility;
 - h.
 - i.



j.

23. From the above provisions of the law, it is clear that parental responsibility is not relegated to one parent alone. It requires joint effort although not exactly the same. It is not enough for one party to claim that his or her income is too small or little hence not enough to support the baby. In *CIN v JNN* (supra) the court expressed this;

“It will not do for a party to say that she has an uncertain source of income and therefore the responsibility of maintaining the children should be borne by the adverse party. The (said) party must establish to the satisfaction of the court that she has also made an effort to provide for the upkeep of the children”.

24. From the impugned judgment, the learned magistrate noted that the respondent is a business lady whereas the appellant was a teacher by profession. She stated that both parties have parental responsibility to maintain the children. It was therefore her finding that shelter and utility bills were to be catered for by the parent who had custody of the minors. She further stated that she had considered that the children are covered by the appellant's medical insurance cover. Consequently, she issued the orders listed under paragraph 2 herein above.

25. I have carefully perused the court record and it is not disputed that the two minors are under the custody of the respondent. It is also not disputed that the respondent is not in any formal employment but is engaged in business activities while the appellant is a teacher and has a basic salary earning of kshs. 51, 383/= from his pay slip.

26. In the impugned judgment, the appellant was ordered to pay Ksh 6,000/= per month for purchase of food and clothing. He was to also cater for the minors' school fees and accessories plus medical expenses which were covered by his medical insurance cover. The respondent on the other hand was to cater for shelter and clothing.

27. It is trite law that parental responsibility is an equal joint responsibility of the parents to a child and no parent shall be treated specially as having a superior right over the child than the other. In *PKM V ANM* [2020] eKLR, where Aroni J stated as follows;

“In my view therefore, one need not go further to look at what parents need to do for a child and to what extent. In this instance the parties have joint responsibility towards their son and no one is superior to the other...”

28. Based on the above cited authorities, the provisions of Section 114 of the *Children Act* and considering the appellant's earnings, I find the order to have the appellant pay kshs. 6,000/= per month for food as well as cater for all educational and medical expenses for the minors to be unreasonable given the circumstances of this case. From my analysis I find that both the appellant and respondent have a joint responsibility towards the bringing up of the children, within their means. Thus, the trial magistrate failed to properly apportion responsibility to both parents based on the evidence before her regarding the financial capacity of each parent.

29. In my view it is only fair and just that the appellant caters for school fees, school related expenses and medical expenses while the responsible caters for shelter, clothing and food. As a responsible father he is at liberty to once in a while bless his children with food and clothing without being coerced into doing so. I so order.



30. The legal custody of the minors was not challenged by the appellant and in any case considering the children in this matter are of tender age, I find that the trial magistrate was right in awarding legal custody to the mother (the respondent herein). However, the appellant shall continue to enjoy his visitation rights as was granted in the lower court judgment.
31. The upshot is that the appeal succeeds in the terms stated herein above at paragraph 29 of this Judgment.
32. This being a family matter each party will bear its own costs.
33. Orders accordingly

**DELIVERED, DATED AND SIGNED THIS 6TH DAY OF NOVEMBER, 2025 IN OPEN COURT
AT NAKURU.**

**H. I. ONG'UDI
JUDGE**

