



MK v GFK (Suing in the Name of her Mother and Next of Kin TWN) (Children's Appeal Case E062 of 2023) [2025] KEHC 15963 (KLR) (6 November 2025) (Judgment)

Neutral citation: [2025] KEHC 15963 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CHILDREN'S APPEAL CASE E062 OF 2023
TW OUYA, J
NOVEMBER 6, 2025**

BETWEEN

MK APPELLANT

AND

GFK RESPONDENT

SUING IN THE NAME OF HER MOTHER AND NEXT OF KIN TWN

(Being an appeal from the entire judgement of the Principal Magistrate at Kigumo Hon. J. Irura delivered on 20th July 2023 in the chief magistrate court children case No. E004 OF 2021)

JUDGMENT

1. The instant appeal is lodged through the memorandum of appeal dated 7th April 2023 on grounds that:
 - a. The learned magistrate erred in fact and in law in apportioning the entire upkeep and maintenance upon the appellant despite *the constitution* and statutes conferring such duty equally on both parents.
 - b. The learned magistrate after ordering the appellant to take up a medical cover for the child under NHIF nevertheless ordered a separate award of Kshs. 7,000.00 and without any justification from the evidence.
2. Therefore, the appellant prayed that the trial court's judgement dated 20.7.2023 be set aside and in its place the court be pleased to order that the Kshs. 5,000.00 for food per month, the Kshs. 4,000.00 per half year for clothes, Kshs. 5,000.00 per month for house rent; all be apportioned equally between the appellant and the respondent so that the appellant should pay half of the said sum amounting to Kshs. 5,000.00 per month and Kshs. 2000.00 every 6 months. The appellant also prayed that the award of Kshs. 7,000.00 for medication be set aside in the entirety in view of the cover under NHIF.



3. The Respondent claimed care, upkeep and maintenance from the Appellant who was his father totalling to Kshs. 52,000.00 comprising medical cover, food, clothes, house rent, medication and miscellaneous expenses. The Respondent's next of kin alleged that he had no gainful economic income enough to sustain the upkeep of the Respondent and therefore needed support from the Appellant, who is a prominent businessman situated at Muthithi shopping centre. She contended that the Appellant's income is sufficient to sustain the Respondent.
4. The Respondent therefore sought a declaration that the Appellant had the legal duty to discharge parental responsibility toward the Plaintiff and an order compelling the Appellant to care for the Respondent's maintenance, upkeep and medical care.
5. The Appellant denied the claim vide his statement of defence dated 18th October 2021 wherein he averred that his work acumen and other matters of his business are in the public domain but that the Respondent has no valid claim to the fruits of his business engagements. Therefore, the Respondent is not entitled to any of the reliefs sought. However, when the DNA test was conducted, the Appellant agreed to contribute Ksh. 3,000.00 per month towards the Respondent's upkeep.
6. When the matter proceeded to trial, the Appellant testified that he was willing to pay for the upkeep of the child at Ksh. 3,000.00 per month as his income is approximately 50,000.00 per month.
7. The Respondent on the other hand testified that she is a practicing nurse employed by the national government earning a salary of Ksh. 40,000.00. Her expenses included rent at Ksh. 6,500.00, electricity at Ksh. 2,000.00 and water bill between Ksh. 1,500.00 to Ksh. 2,000.00
8. The trial court in its judgment observed that maintenance orders are made in the best interest of the child and ought not be oppressive or punitive to any party as observed by Musyoka J in SKM v MWI [2015] eKLR. While observing that parental responsibility is a shared responsibility, the court declared that the Appellant has a legal duty to discharge parental responsibility towards the Respondent and a maintenance order to be borne by the Appellant was issued as follows:
 - i. NHIF medical cover for the Respondent
 - ii. Food at Ksh. 5,000.00 per month
 - iii. Clothes at Kshs. 4,000.00 per half of the year since the child is still growing
 - iv. House rent at Ksh. 5,000.00 per month
 - v. Medication at Ksh. 7,000.00 per month.
9. Aggrieved and dissatisfied with the decision of the trial court, the Appellant lodged the instant appeal.
10. By order of the court, the appeal was canvassed through written submissions.
11. The appellant submitted that the trial court erred in apportioning the entire responsibility on the appellant contrary to *the constitution* and statutes which confer the duty equally to both parents. Furthermore, the claim for Kshs. 7,000.00 for medication was a special damage claim and therefore ought to have been specifically pleaded and proved. The Respondent merely alleged that she was undergoing physiotherapy for her feet condition yet the same was not proved in evidence as required by law.
12. Flowing from the above, the Respondent submitted that the amount awarded be apportioned equally between the appellant and the next of kin.
13. The Respondent's submissions are not in file.



14. The question for determination herein is whether this appeal has merit and if the order sought should be granted.
15. The case herein concerns minors whose rights are enumerated under Article 53(1)(e) and (2) of the Constitution of Kenya 2010 as follows:

Article 53(1)(e) 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 Article 53(2) A child’s best interests are of paramount importance in every matter concerning the child.
16. On the same note, Sections 30-36 (Part III) of the Children Act No. 29 of 2022 provide for parental responsibility. Section 31 of the same Act defines parental responsibility and provides thus:
 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.
17. Ideally, parental responsibility is not defined in terms of money or financial contribution paid by one parent to another. Rather, it is a duty to be discharged by both parents to cater for the needs of a child, financial or otherwise as stated in the Act. It is obvious that education, medical expenses, clothes and all the basic needs of the child are payable with money.
18. In this appeal, the appellant seeks that this court defines the amount of money each parent should pay as “parental responsibility”. The trial magistrate gave maintenance orders that:
 - i. NHIF medical cover for the Respondent
 - ii. Food at Ksh. 5,000.00 per month
 - iii. Clothes at Kshs. 4,000.00 per half of the year since the child is still growing
 - iv. House rent at Ksh. 5,000.00 per month
 - v. Medication at Ksh. 7,000.00 per month.
19. From the Complaint, the Respondent had sought maintenance of Kshs. 52,000.00. The cumulative amount ordered by the trial magistrate totals Kshs. 21,000.00. It therefore follows that the needs apportioned by the trial magistrate were made upon duly considering the totality of the amount that the Respondent had prayed for. The trial magistrate apportioned these needs in the interest of the child.
20. Other than the averments made by the parties regarding their income, I see no basis upon which a decision on the proper maintenance order can be made. The parties would have supplied an affidavit of means to ascertain whether there has been a change in income post the trial court’s judgment. However, noting that the issue of ability to pay has not been brought up by the Appellant, from the trial record, I think that the trial magistrate factored in all the aspects that would encompass the best interest of the child. The other aspect of parental responsibility would be custody of the children but the same did not arise as an issue at trial and so this court will not address it.
21. The orders of the trial magistrate are sufficient to fulfill the interests of the minors. For this reason, I find that the appeal lacks merit and is hereby dismissed.

DATED, SIGNED AND DELIVERED ELECTRONICALLY THIS 6TH DAY OF NOVEMBER, 2025.

HON. T. W. OUYA



JUDGE

