



REPUBLIC OF KENYA



**KENYA LAW**  
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**SNK v QAO (Civil Appeal E054 of 2025)  
[2025] KEHC 16830 (KLR) (Family) (19 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16830 (KLR)

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

**FAMILY  
CIVIL APPEAL E054 OF 2025**

**H NAMISI, J**

**NOVEMBER 19, 2025**

**BETWEEN**

**SNK ..... APPELLANT**

**AND**

**QAO ..... RESPONDENT**

**RULING**

1. Before the Court is Notice of Motion dated 6 November 2025, seeking the following orders:
  - i. Spent
  - ii. That pending the hearing and determination of this Application, this Honourable Court be pleased to issue an order compelling the Appellant to produce the Minor, KG, before this Honourable Court;
  - iii. That on production of the Minor and pending the hearing and determination of this Application and the substantive appeal herein, this Honourable Court be pleased to make an order granting the actual custody, care and control of the minor to the Respondent/Applicant
  - iv. That this Honourable Court be pleased to make any further orders as it deems fit and just in the circumstances;
  - v. That the costs of this Application be provided for.
2. The Application is supported by the Affidavit sworn by the Applicant and premised on the grounds on the face thereof.



3. The Application comes hot on the heels of an appeal lodged herein against the orders of Hon R. Gitau delivered on 1 April 2025 in Children Case No. E615 of 2022. Prior thereto, the trial court had rendered a judgement dated 22 September 2023 as follows:
  - i. The legal custody of the minor to jointly best in the Plaintiff and Defendant;
  - ii. That her actual custody, care and control to vest in the Defendant;
  - iii. That the Plaintiff is granted access as follows:
    - a. During school days on alternate weekends from Friday evening to Sunday morning;
    - b. During school mid term and school holidays at a ratio of 50:50;
    - c. During public holidays on alternating basis;
    - d. At school subject to school rules and regulations;
    - e. Parties agree to pick up and drop off points;
  - iv. Parental Responsibility is apportioned as follows:

Plaintiff:

    - a. School fees and school related expenses (fully) in the current school or any other school as parties may agree;
    - b. Medical;
    - c. Kshs 10,000/= monthly towards upkeep payable on or before the 5<sup>th</sup> day of every month.
4. Both parties agree that the judgement of 22 September 2023 is the operative order.
5. The crux of the dispute is the allegation that the Appellant, having secured a stay of execution of the trial court's order- thereby ostensibly restoring her custodial rights pending appeal – surreptitiously removed the child from the jurisdiction of Kenya to Canada. This removal is alleged to have occurred at a critical juncture in the child's educational life, when the child was scheduled to sit for the Kenya Primary School Education Assessment (KPSEA).
6. The Appellant, in her Replying Affidavit sworn on 12 November 2025 does not deny the removal. Instead, she advances a defence predicated on a novel interpretation of “curing defects” and the assertion of superior economic prospects aboard.
7. The Application was canvassed orally. I have carefully noted the submissions by the respective counsel.
8. This Court is thus called upon to adjudicate on a conflict between the freedom of movement of a custodial parent and the jurisdictional integrity of the Court over a Kenyan child who is the subject of an active appeal. Can a parent unilaterally alter the substratum of an appeal by removing the child from the jurisdiction, thereby rendering the appellate process potentially nugatory?
9. Section 102 of the *Children Act* empowers the court to regulate custody. Implicit in joint legal custody is the requirement for consultation on momentous decisions. Emigration is the most momentous decision in a child's life.



10. From the documents on record, it would appear that the Appellant was fully aware that the issue of travel was contentious. The Ruling of 1 April 2025, which is the subject of the appeal herein, explicitly stated:

“The request for the original birth certificate is found to be unjustified and is thus denied... [travel] would in essence curtail the Plaintiff’s rights over the minor.”

11. Even as the appeal is pending, the Appellant circumvented the refusal by the trial court. It is curious how she obtained a Certificate of Birth or travel documents for the child without the father’s knowledge and/or consultation. This is an act of bad faith. It is a subversion of the court process. Even a parent with actual custody cannot unilaterally relocate a child to a foreign jurisdiction without the consent of the other parent or leave of the court. The reason is simple: relocation extinguishes the non-custodial parent’s right to access, a right protected under Article 53(1)(e) of the Constitution.

12. The Appellant’s argument that she cured the defect is misplaced. One cannot cure a procedural defect in a pending appeal by committing an illegality. The ‘status quo’ meant that the child remains in the environment she was in while the legal arguments are being sorted. It did not grant a licence for international abduction.

13. Article 52(3) of the Constitution mandates that a child’s best interests are of paramount importance in every matter concerning the child. The Appellant’s casual admission regarding the KPSEA exam is deeply disturbing. She depones: “This is why she didn’t sit KPSEA exam last month.” The Court takes judicial notice that the KPSEA is a critical transition assessment in the Kenyan Competency-Based Curriculum. It marks the completion of the primary cycle and the transition to junior secondary school. Causing the child to miss this assessment violates section 13 of the Children Act and Article 53(1)(b) of the Constitution. To pull the child out of school just when the child is about to sit this crucial final exam indicates a parent who prioritizes her own schedule over the child’s educational milestones.

14. The Applicant seeks production of the child. While the child is outside the territory, this Court retains jurisdiction in personam over the Appellant. The Appellant has submitted to this jurisdiction by filing the appeal and the Replying Affidavit. Therefore, this Court can validly order her to return the child.

15. Therefore, in exercise of the powers conferred by Article 53 of the Constitution and section 102 of the Children Act, I make the following orders:

- i. The Appellant is hereby ordered to produce the child, KG, before this Court within 45 days of the date of the Ruling. Physical production shall be dispensed with only if the child is handed over to the Respondent in Kenya within the said period;
- ii. The Respondent is hereby authorised to take all necessary legal steps, including engaging with the Department of Children’s Services, the Department of Immigration and relevant diplomatic channels, including the Canadian High Commission, to enforce his custodial rights and facilitate the return of the child to the jurisdiction of this Court;
- iii. Mention on 21 January 2026 to confirm compliance.
- iv. Costs of the Application shall be borne by the Appellant;
- v. Right to appeal is hereby granted.

**DATED AND DELIVERED AT NAIROBI THIS 19 DAY OF NOVEMBER 2025**

**HELENE R. NAMISI**



**JUDGE OF THE HIGH COURT**

By consent of parties, the ruling is delivered electronically by uploading on the court tracking system (CTS)

Court Assistant: Lucy Mwangi

