



**PKK v BMS (Family Appeal E009 of 2025)
[2025] KEHC 17340 (KLR) (17 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17340 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
FAMILY APPEAL E009 OF 2025
TM MATHEKA, J
NOVEMBER 17, 2025**

BETWEEN

PKK APPELLANT

AND

BMS RESPONDENT

RULING

1. On 17/6/2025 the learned trial court granted custody of the minors herein- to the mother -B.M.S with unlimited access to the father - P.K.K.
2. The father was aggrieved and he filed this appeal – seeking to retain custody of the children.
3. The reason was that the mother of the children had lost contact with them, and they had become estranged since 2021 and early 2022 when the mother left the matrimonial home leaving the children with their father.
4. The office of State Department of Children Services Kathonzweni, through a report filed in the matter indicated that the children had stayed longer with the father, forming a strong bond with him -
5. When the matter first came for mention before me it turned out that the father had retained custody despite the order of the court and had cut off communication between the children and their mother to the extent that he told the court he did not trust her with the children.
6. Article 53 of *the Constitution* states
 - (1) Every child has the right—
 - (a) to a name and nationality from birth;
 - (b) to free and compulsory basic education;



- (c) to basic nutrition, shelter and health care;
 - (d) to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour;
 - (e) 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; and
 - (f) ...
- (2) A child's best interests are of paramount importance in every matter concerning the child.
7. The *Children Act* 2022 at s. 32. provides for Equal parental responsibility thus;
- (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.
8. In view of the above and in the best interests of the child, the court explained to the appellant and counsel that this matter was not about his differences with his spouse but the rights of the children to equal care and attention, love and responsibility by each parent - and that it was in the best interests of each child that he having the custody of the children, had the higher duty to ensure that they kept in touch with their mother. His position was that she should travel from Mwingi where she works to the matrimonial home in Kathonzwi to see the children. She told the court that the home was hostile to her and that was one of the reasons she had kept off.
9. Taking into consideration their respective positions the court asked them for a middle ground after directing that it was important for the mother to keep in touch with the children, and to have access to the children.
- Finally, a supervised visit was arranged for 8/11/2025 and the Children Officer was available – The father travelled with the children from Kathonzwi, the mother came from Mwingi, they met in Machakos Town.
10. The report from the supervised visit was positive . It was reported that the boy was still hesitant to be with the mother and seemed to fear her. However, at the end of the day the visit went well. The children expressed the desire to visit with their mother.
11. From the visit and report was written recommending that during school holidays custody be shared between the parents and during this holiday (November-December) 2025 the mother be granted custody – supervised by the children officer Mwingi Central.
12. The *Children Act* further provides
- 6. Survival and development of the child
 - (1) Every child shall have the right to life, survival, wellbeing, protection and development.
 - 11. Right to parental care
 - (1) Every child has the right to parental care and protection.
 - (2) Except as is otherwise provided under this Act, every child has the right to live with his or her parents.



- (3)
- (4)
- (5)
- (6) Subject to subsection (3), every child who is separated from one or both parents shall have the right to maintain personal relations and direct contact with the parent or parents on a regular basis, unless it is shown to the satisfaction of the Court that such contact is not in the best interest of the child

13. Court heard the parties and their counsel. No parent has superior rights over the children- the issue is the rights of each child and the responsibilities of the parent to safeguard the welfare of the children .There is no reason to keep the children away from either parent. The way forward was agreed that the parties would proceed as per the recommendations of the Children Officer. In view of that the following directions issue pending the hearing and determination of the appeal

14. The following directions issue:-

- i. The parents will have joint legal custody.
- ii. They will share physical custody. The mother will have 2 weeks with the children on dates to be agreed on – the handing over of the children which take place under the supervision of the children officer Constance Muasa – in Machakos.
- iii. The children will be handed over at Machakos
- iv. Each parent will bear the cost of transport to and from Machakos .
- v. The Children Officer Mwingi Central will be on standby receive the children and their mother and to file reports regular reports on the status of the children .
- vi. Communication lines will remain open at all times .

In default of communication the parent will inform the children officer for necessary action.

The parents have agreed that the first visit with the mother will take place between the 22nd November 2025 and 6th December 2025. The parents and their counsel have agreed to deal with the logistics accordingly.

This order be served on the County Children Officer Makueni to liaise with the County Children Officer Kitui County for compliance .

Mention on 16/12/2025 for progress

Orders Accordingly

DATED, SIGNED AND DELIVERED THIS 17TH NOVEMBER 2025

MUMBUA T. MATHEKA

JUDGE

CA Chrispol

Appellant Present

Counsel for the Appellant Ms. Kemboi

Respondent



Counsel for the Respondent Ms. Kyalo

