



**SNN v YWM (Miscellaneous Application E267 of 2025)  
[2025] KEHC 17519 (KLR) (Family) (28 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 17519 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
MISCELLANEOUS APPLICATION E267 OF 2025  
PM NYAUNDI, J  
NOVEMBER 28, 2025**

**BETWEEN**

**SNN ..... APPLICANT**

**AND**

**YWM ..... RESPONDENT**

**JUDGMENT**

1. Before this court is the application dated 18<sup>th</sup> August 2025 by which the Applicant, SNN seeks the following orders:-
  1. Spent.
  2. Spent.
  3. Spent
  4. The Honourable Court do stay orders issued by the trial court on 22<sup>nd</sup> July 2025 in Children Case No. 625 of 2016 at Milimani Law Courts by the trial court pending hearing and determination of the appeal herein.
  5. The costs of this application be borne by the Respondent.
2. The Application was premised upon Section 99 of the Children’s Act and was supported by the Affidavit of even date sworn by the Applicant.
3. The Applicant’s case is that the court issued orders on 22<sup>nd</sup> July 2025 allowing the respondent to relocate with the minor to Japan where she had secured a job. The Applicant is opposed to the relocation of the minor as he was not consulted about the relocation. According to him, it will be



- difficult for him to access the minor because of the distance. He is also not guaranteed that he will get a visa to Japan and the costly travel expenses involved.
4. He argues that he was aware that the respondent had secured a job and they agreed that the minor remains in Kenya. He argues that the removal of the minor from this jurisdiction, will disrupt the minor's education. He is also worried that he will not be able to adapt to the new lifestyle and language in Japan. The ties between his wife, the minor's half siblings, grandparents, uncles, aunts, cousins and friends will be negatively affected. He is worried that the respondent has not indicated where the minor will reside, go to school and the medical cover arrangements she has put in place for the minor.
  5. He argues that in the event the respondent relocates with the minor, it will be difficult to enforce access and actual custody considering that this court does not have jurisdiction if the child is moved to Japan. He alleges that the respondent has a history of not complying with court orders. He accuses her of denying him access of the child where there were court orders on access and refusing to look for a nanny to take care of their child who was staying with his mother then. He avers that although the trial court noted that the child gave his view about travelling to Japan, the minor is still a child of tender years and is not aware of the impact of moving. Efforts to have a second psychological report was not allowed by the trial court. He urged the court to allow his application.
  6. In response, the Respondent YWM opposed the application through a Replying Affidavit sworn on 14<sup>th</sup> October 2025. She averred that the application is made in bad faith and is not in the best interest of the child. She avers that she has been the primary custodian of the minor. The applicant on the other hand neglected his responsibilities in payment of school fees and maintenance. When she got a job opportunity in Japan, she informed the applicant who did not allow her to travel with the minor. Instead, he asked her to be sending him school fees and maintenance. The minor indicated that he wanted to travel with her and that is when she made an application in the trial court seeking an order to be allowed to travel with the minor.
  7. She maintains that she is willing to allow the applicant and his family to have access of the minor while he is out of the jurisdiction. She argued that the applicant is raising new issues about her job which were not raised in the trial court. She avers that she has since relocated and has been denied access to the minor by the respondent. She denied the allegation that the applicant made a request for a second opinion as the same was never made. The applicant was disappointed by the report which was not in his favour. That allowing the minor to travel with her was in the best interest of the minor and that the minor's ascertainable wishes were considered. She urged the court not to allow the application of stay. Instead, the applicant should avail the minor to process his travel documents. She averred that she is willing to pay for the minor's travel expenses.

## **Background**

8. The parties herein were involved in Nairobi Children Case No. 625 of 2016. The trial court was tasked to determine an application dated 19<sup>th</sup> December 2024 where the Respondent sought the following orders;
  - i. That the child remains in the physical custody of the Applicant and in this regard the Applicant be granted leave to travel with the child to (withheld).
  - ii. That the Applicant shall facilitate digital access by the Respondent to the child (via conference call).
  - iii. That the Respondent shall have access to the child whenever the child is to travel to Kena and shall facilitate his travel arrangements.



- iv. That the Applicant shall provide for the maintenance needs of the child, while the child is in (withheld).
  - v. That the Respondent executes documents to facilitate the travel of the child to (withheld).
  - vi. That the minor be presented to the court for interview to ascertain his wishes (spent).
9. On 22<sup>nd</sup> July 2025, Hon. Jackie Kibosia, Principal Magistrate made the following orders;
1. That leave is granted to the applicant to remove the child from the jurisdiction of the court.
  2. That she is to furnish the respondent with her residential address and contacts while abroad.
  3. That the Respondent is granted unlimited but reasonable access in the relocation city/town.
  4. That the respondent is granted audio visual contact every Tuesday and Thursday 5pm to 8 pm (at relocation town's time zone) and during weekends.
  5. That the applicant to provide the child's school schedule and enable travels to Kenya during the long school break.
10. The Applicant was aggrieved by the court's orders and filed an appeal before this court.
11. The court gave orders that the application be canvassed by way of written submissions. At the time of writing this ruling, none of the parties had filed written submissions.

#### **Analysis and Determination.**

12. I have considered the application before me and the Reply filed by the Respondent. The issue for determination is whether the Court should grant stay orders as sought pending the hearing and determination of the appeal.
13. As this matter concerns the welfare and well-being of a child, I am bound by the Constitutional imperative at Article 53 (2) of the Constitution of Kenya, 2010 that states:
- (2) A child's best interests are of paramount importance in every matter concerning the child.
14. Likewise, the Children Act at section 8(1) provides as follows:-
- 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. (Own emphasis)
15. The principles for granting stay of execution or proceedings in children matters was well settled in the case of *Bhutt v Bhutt Mombasa HCCC No. 8 of 2014*, the Court held as follows:-
- “In determining an application for stay of execution in cases involving children, the general principles for the grant of stay of execution Order 42 Rule 6 of the civil Procedure Rules, must be complemented by overriding consideration of the best interest of the child in accordance with “Article 53(2) of the Constitution.” (Own emphasis).
16. I reiterate that in making a decision on this matter the primary consideration is the best interests of the child, which of necessity will trump the wishes and desires of the parents and treat them as secondary.
17. In exercising discretion in respect to stay of execution, Order 42 Rule 6(2) provide that the Court should be satisfied that:-



- a. The applicant will suffer substantial loss if a stay is not granted;
  - b. The application for stay has been brought without undue delay; and
  - c. The applicant has provided security for the due performance of the decree.
18. In the case of *Kenya Power & Lighting Company Limited v Esther Wanjiru Wokabi*, Civil Appeal No 326 of 2013 it was stated that:-
- to my mind, the courts discretion in deciding whether or not to grant stay of proceedings as sought in this application must be guided by any of the following three main principles;
- a. Whether the applicant has established that he/she has a prima facie arguable case.
  - b. Whether the application was filed expeditiously and
  - c. Whether the applicant has established sufficient cause to the satisfaction of the court that it is in the interest of justice to grant the orders sought.
19. The impugned ruling was delivered on 22<sup>nd</sup> July 2025. The present application was filed on October 18<sup>th</sup> August 2025 three (3) weeks after said ruling was delivered. Accordingly, I find that the application for stay was filed in a timeous manner.
20. The only question the court needs to ask itself is whether the stay being sought will serve the best interests of the child. I do not think so.
21. There are orders in place that grant custody to the mother. She left the Child in the custody of the father when she first travelled to Japan. The child's opinion has been sought nad he has expressed a desire to be with his number. The father is urging that the Court should not place too much weight on the views or expressed wishes of the minor.
22. The law does not support this proposition. Section 222 of the Children Acxt safeguards the Child's right to be heard in proceedings it provides-
222. Right of a child to be heard in proceedings
- (1) Every child shall be afforded an opportunity to be heard in proceedings affecting the child, either directly or through a representative.
23. The right to be heard means not only does the child have the right to express their opinions but that further that view will be given due consideration and the Court having regard to the age and evolving capacities of the child determine the weight to give the child's view. I am mindful of the fact that the trial court interviewed the minor herein and formed the impression that the child was capable of expressing himself. The Court also considered that currently the minor is staying with a grandparent who is ailing.
24. In addition, Section 103 (c) of the *Children Act* provides that the court must consider the ascertainable wishes of the child, when making a determination on custody.
25. The respondent has an opportunity to advance herself in Japan. She has the means to provide for the child. The Court has given directions for virtual access to the minor. In addition the respondent is required to arrange for the minor's travel to visit when on long holiday. Under optimal conditions the a child has equal access to both parents as they are most likely staying under the same roof. When however as in this case, the parents are estranged and unable on their own to agree on a working arrangement, the court is charged with the responsibility of designing an arrangement thatv places the child at the fore.



26. The trial court had the opportunity of observing the minor in person. The stay of the orders herein is not in the minor's interest. In my view no prejudice will be suffered by the applicant as the trial court has made adequate directions for his access including unsupervised access whilst the child is on holidays.
27. Accordingly, I decline to grant the stay of execution and direct that the respondent be and is hereby allowed to travel with the minor herein to Japan pending the hearing and determination of the appeal herein.
28. The Respondent will have access to the minor in the manner directed by the trial court in the interim.
29. This being a family matter there shall be no order as to costs.
30. Parties are at liberty to appeal, any party exercising their right to appeal to do so within 30 days.

**DATED AND DELIVERED AT NAIROBI THIS 28<sup>TH</sup> DAY OF NOVEMBER 2025.**

**P. M NYAUNDI**

**JUDGE**

In the presence of:

Fardosa Court Assistant

Kibaara holding brief Ms. Mundia for Respondent

Kamenju for Applicant

