



**VAO v EGM (Appeal E088 of 2024) [2025] KEHC 18107 (KLR)
(Family) (5 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 18107 (KLR)

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

**FAMILY
APPEAL E088 OF 2024
H NAMISI, J
DECEMBER 5, 2025**

BETWEEN

VAO APPELLANT

AND

EGM RESPONDENT

(Being an Appeal from the Judgement of Hon Charity Oluoch, Chief Magistrate delivered on 19 July 2024 in Nairobi Children’s Case No. E034 of 2021)

JUDGMENT

1. This appeal invites this Court to navigate the delicate and often acrimonious intersection of parental responsibility, the sanctity of Court orders, and the evidentiary standards required to enforce financial claims in family litigation. The Appellant has moved to this Court to set aside the Ruling of the learned Chief Magistrate, Hon C. Oluoch, delivered on 19 July 2024 in the Children’s Court. The impugned Ruling dismissed the Appellant’s Application for execution of a decree for arrears amounting to Kshs 209,675/= save for a sum of Kshs 52,000/- awarded as upkeep arrears.
2. The core of the dispute revolves around the enforcement of a consent order dated 22 March 2021, which apportioned parental responsibilities between the parties. The Appellant contends that the Respondent has systematically abdicated his responsibilities regarding school fees and medical expenses, necessitating her to incur debts to cover these costs, for which she now seeks reimbursement. Conversely, the Respondent alleges that the Appellant is utilizing the court process to extort funds through the presentation of forged receipts and claims for non-existent medical treatments at unregistered facilities.



Brief Background

3. Litigation commenced in early 2021 when the Appellant filed suit seeking maintenance and custody orders. On 22 March 2021, the parties appeared before Hon. G. N. Opakasi, SPM, and recorded a consent. This order, which forms the bedrock of the Appellant's claim, provided as follows:
 - i. Custody - The Appellant was granted actual custody of the minor, with shared legal custody
 - ii. Access - the Respondent was granted access every alternate weekend and shared school holidays;
 - iii. School fees – the Respondent shall cater for the minor's school fees and school related expenses
 - iv. Medical expenses – the Respondent shall cater for the minor's medical expenses;
 - v. Maintenance – the Respondent was to pay Kshs 8,000/- per month for the minor's food, payable on or before the 5th of every month;
 - vi. Shelter – the Appellant was to cater for shelter, house help and other household items.
4. The consent was adopted as an order of the Court.
5. By May 2022, the Respondent filed an application seeking review of the consent, citing financial distress. He sought, inter alia, a reduction of the monthly upkeep to Kshs 4,000/- and a transfer of the minor to a more affordable school.
6. On 23 November 2022, Hon. Opakasi delivered a Ruling on the application, declining to reduce the monetary upkeep of Kshs 8,000/-, citing the rising costs of living and the best interest of the child. Regarding medical expenses, the court ordered that the minor continues to be on NHIF cover, with the Respondent to cater for expenses not covered by the scheme. Regarding education, the court directed the parties to consult and settle on a mutually agreed school where the minor should be transferred.
7. The Respondent interprets this Ruling as authorisation to cap his school fees contribution at Kshs 15,000/-, a figure he claims fits his budget for an affordable school. The Appellant, however, maintains that until such a transfer is mutually agreed upon and effected, the Respondent remains liable for the full fees at the current school. Fadhili Junior School.
8. The immediate subject of this appeal is the Notice to Show Cause (NTSC) filed by the Appellant on 26 February 2024. The Appellant sought to enforce recovery of Kshs 209,675/- alleging that the Respondent had accumulated arrears in violation of the court orders. In support of the Application, the Appellant filed a Supplementary Affidavit on 13 February 2024 and a Further Affidavit on 29 April 2024, attaching numerous annexures, including M-pesa statements, handwritten cash sale receipts, and photos of the minor.
9. The Respondent opposed the application via a Replying Affidavit dated 2 April 2024 and a Supplementary Affidavit dated 14 May 2024. He alleged that the receipts for school-related expenses were forged by the Appellant. To prove this, he engaged a forensic document examiner. The Respondent asserted that the Helicare Medical Clinic is a non-existent and unregistered facility, and thus claims originating from it are fraudulent. He claimed to have paid Kshs 15,000/= per term towards school fees and provided an NHIF card, thereby discharging his obligations within his means.
10. The trial court delivered its Ruling, dismissing the bulk of the Appellant's application. The court found as follows:



- i. On Upkeep – the Respondent owed Kshs 52,000/=, after deducting amounts for the period the child was in his custody;
 - ii. On medical expenses – Dismissed because the facility was confirmed to be unregistered by regulatory bodies, and the minor had NHIF cover;
 - iii. School fees – dismissed because the Appellant failed to provide official school receipts to verify the mpesa payments were for arrears the Respondent failed to meet.
 - iv. School -related expenses – dismissed based on the uncontroverted evidence of the forensic document examiner that the receipts were forged.
11. Aggrieved, the Appellant lodged this appeal by filing a Memorandum of Appeal that sets out 28 grounds. The appeal was canvassed by way of written submissions.
 12. The Appellant submits that the trial court failed to uphold the consent order of 22 March 2021, which mandatorily required the Respondent to pay all school fees and medical expenses. She argues that the Respondent’s unilateral decision to pay only Kshs 15,000/- is a contemptuous variation of the court order without judicial sanction. Regarding school fees, the Appellant contends that she provided sufficient proof of payment via mpesa statements and Equity Bank transaction confirmations. The Appellant argues that the trial court erred in rejecting rejecting these electronic records in favor of official school receipts, ignoring the reality that M-Pesa statements explicitly show the recipient (Fadhili Junior School Paybill) and the purpose (Account No. 04610, the minor's admission number). She asserts that she was forced to pay the deficit to keep the minor in school after the Respondent capped his contribution.
 13. On medical expenses, the Appellant submits that the minor suffers from Asthma, a chronic condition requiring urgent care. She argues that the NHIF card provided by the Respondent is frequently rejected by hospitals due to lack of capitation or system failures, especially during emergencies at night or on weekends. The Appellant contends that she sought treatment at the nearest available facility, Helicare Medical Clinic, to save the minor’s life, and that the registration status of the clinic was unknown to her and irrelevant to the emergency nature of the treatment.
 14. Regarding fair hearing, the Appellant claims that the trial court delivered the Ruling without considering her Further Affidavit and submissions filed on 29 April 2024, and that certain documents failed to upload on the court’s Case Tracking System (CTS). She argues that she was not given a chance to counter the Respondent’s ambush with the forensic report.
 15. On his part, the Respondent argues that the Ruling of 23 November 2022 effectively varied the consent order by acknowledging his financial inability to pay full fees at Fadhili Jr School. He contends that since the trial court ordered a transfer to an affordable school and he identified schools costing Kshs 15,000/-, his liability is capped at that amount. He argues that by refusing to transfer the minor, the Appellant voluntarily assumed the liability for any fees above Kshs 15,000/-.
 16. The Respondent places heavy reliance on the issue of fraud and forgery. He submitted a Forensic Document Examination Report by Mr. Daniel M. Gutu (ex-DCI), which concluded that the handwritten receipts submitted by the Appellant were authored by the Appellant herself. He submits that the Appellant failed to cross-examine the expert or provide a counter-opinion, leaving the evidence of forgery uncontroverted. The Respondent invokes the principle that he who alleges must prove (Section 107 *Evidence Act*) and argues that a claim based on forged documents is an abuse of court process.



17. Regarding medical expenses, the Respondent provided letters from the Kenya Medical Practitioners and Dentists Council (KMPDC), the Nursing Council of Kenya, and the Clinical Officers Council, all confirming that Helicare Medical Clinic does not exist in their registers. The Respondent argues that a court cannot order reimbursement for payments made to an illegal entity.

Analysis & Determination

18. It is now well established that the role of the first appellate court is to re-evaluate, re-assess and re-analyze the evidence tendered at the trial in a bid to reach its own independent conclusion. This principle was well captured in the case of *Abok James Odera t/a A.J. Odera and Associates v John Patrick Machira t/a Machira & Co. Advocates* [2013] eKLR where the Court of Appeal held that:-

“This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and reanalyse the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way. See the case of *Kenya Ports Authority versus Kuston (Kenya) Limited* (2009) 2EA 212 wherein the Court of Appeal held inter alia that:-

“On a first appeal from the High Court, the Court of Appeal should 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 that respect. Secondly that the responsibility of the court is to rule on the evidence on record and not to introduce extraneous matters not dealt with by the parties in the evidence”

19. The same principle was enunciated by the Court of Appeal in the case of *Nation Media Group Ltd & 2 others v John Joseph Kamotho & 3 others* [2010] eKLR where it was held that:-

“It is trite law, and we accept Mr. Kiragu’s submission that this Court is not bound necessarily to accept the findings of fact by the court below and 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 allowances in this respect. See *Selle and Another v Associated Motor Boat Company Limited and others* [1968] EA 123.”

20. The jurisdiction of this Court is invoked pursuant to Section 184 of the *Children Act*. The paramount principle guiding this determination is Article 53(2) of the *Constitution* which decrees that in every matter concerning the child, the child’s best interests are of paramount importance. This constitutional imperative serves as the lens through which all procedural and substantive arguments in this appeal must be viewed.

21. Upon review of the Record of Appeal, supplementary Record of Appeal and submissions of the parties, the following issues lend themselves for determination:

- i. Whether the Appellant was denied a fair hearing by the trial court;
- ii. Whether the trial court erred in finding that the receipts submitted by the Appellant were forgeries and consequently dismissing the claim for school-related expenses;
- iii. Whether the trial court erred in dismissing the claim for medical expenses on the basis of the facility's registration status;



- iv. Whether the trial court erred in dismissing the claim for school fees reimbursement and rejecting M-Pesa statements as proof of payment;
- v. Whether the Respondent's unilateral capping of school fees at KSh 15,000/= is lawful under the existing court orders.

Fair Hearing

22. The Appellant alleges a violation of Article 50 of the *Constitution*, claiming the trial court ignored her filings and that documents failed to upload to the CTS. The right to a fair hearing is absolute and includes the right to be heard and to have one's evidence considered.
23. However, the record paints a different picture. The trial magistrate's notes indicate that on 22 April 2024, the court gave directions for the filing of further documents and submissions within 14 days. The Appellant filed her Further Affidavit on 29 April 2024 and her Submissions on 30 April 2024. The Respondent filed his Supplementary Affidavit (containing the forgery allegations) on 14 May 2024. The ruling was delivered on 19 July 2024.
24. The Appellant had over 2 months between the filing of the Respondent's expert Report (May) and the Ruling (July) to seek leave to cross examine the expert or file a rebuttal. The record is silent on any such application by the Appellant. Procedural fairness requires that the court provide the opportunity to be heard; it does not compel the court to force a party to utilise that opportunity effectively.
25. Regarding the CTS issue, the burden of ensuring the court file is complete rests with the litigant. The Appellant has not demonstrated which specific document was missing that would have overturned the finding of forgery. The Magistrate's ruling explicitly references the Applicant's affidavit and the bundle of receipts, indicating that the court was seized of the material. This ground of appeal, therefore, fails.

Forged Documents

26. The Court notes, with deep concern, the allegations of forgery, which strike at the heart of the administration of justice. The Appellant submitted various receipts to support her claim of Kshs 32,205/= for school items. These included receipts from Juddie Collectio, Winkii & Twins, Totoz Empire and Ramaa Bookshop.
27. The Respondent challenged these documents and adduced a forensic Documents Examination Report. The expert analysed the handwriting on the questioned receipts against the known handwriting of the Appellant. The expert concluded unequivocally: "In my opinion questioned writings on documents marked A1-A6 are similar and indistinguishable in comparison with known handwritings on documents marked B... Questioned writings were written by Violet Akinyi Oduor".
28. The standard of proof in civil cases where fraud or forgery is alleged is higher than a mere balance of probabilities, though not as high as beyond reasonable doubt. The Respondent discharged this burden by providing expert evidence. The burden then shifted to the Appellant to rebut this. She did not. She did not call a counter-expert, nor did she cross-examine Mr. Gutu.
29. The trial magistrate correctly observed: "Certainly, the Applicant has not presented any evidence to counter the findings of the handwriting expert... His opinion remains uncontroverted and I have no reason not to believe it".
30. It is a cardinal maxim of equity that he who comes to equity must come with clean hands. By fabricating evidence to support her financial claims, the Appellant attempted to pervert the course of justice.



This Court cannot sanction such conduct. Consequently, the dismissal of the claim for school-related expenses was not only proper but necessary to protect the integrity of the judicial process.

Medical Expenses

31. The Appellant claimed Kshs 24,670/= for medical expenses, primarily relying on receipts from Helicare Medical Clinic. The Respondent challenged the existence of the facility.
32. The evidence on record includes correspondence from the 3 statutory bodies mandated to regulate medical practice in Kenya.
 - i. Kenya Medical Practitioners and Dentists Council (KMPDC): Letter Ref KMPDC/COE/HTIC/REC/Vol.1/24/010 dated 7th March 2024 states: "This is to confirm that Heli Care Medical Clinic does not appear in records held in this office".
 - ii. Nursing Council of Kenya: Letter Ref NCK/CEO/178/2024 dated 8th March 2024 states: "Heli Care Medical Clinic is not registered by the Council".
 - iii. Clinical Officers Council: Letter Ref COC/ADM/LGL/VOL.1/21 dated 6th March 2024 states: "We have established that said facility does not exist in our database".
33. The Appellant argues that in an emergency, a mother cannot be expected to verify the registration status of a clinic. While the Court empathises with the urgency of a sick child, the law is clear. The *Medical Practitioners and Dentists Act* (Cap 253) prohibits the operation of unregistered medical facilities. A court of law cannot order reimbursement for payments made to an illegal entity, as this would amount to judicial sanctioning of illegality.
34. Furthermore, the receipts from Helicare Clinic bear striking visual similarities to the handwritten receipts proven to be forged in the school expenses claim. Given the Appellant's established propensity for forgery in this matter, the credibility of the Helicare receipts is terminally compromised. The trial magistrate was correct to hold that "I cannot rely on documents sourced from an unregistered clinic to order reimbursement".
35. Regarding the Appellant's argument that NHIF is ineffective, if the Respondent was ordered to provide NHIF and the card is dysfunctional, the Appellant's remedy lies in applying for a variation of the order to compel a different form of cover (e.g., private insurance), as she attempted in her motion. However, she cannot unilaterally incur expenses at dubious facilities and demand reimbursement based on questionable documents.

School Fees Payments

36. The Appellant sought Kshs 90,300/- in school fees arrears. The trial court dismissed this claim on the ground that there are no receipts or statements from the school to confirm payments and that the court could not assume mpesa payments were for arrears the Respondent failed to meet.
37. The Respondent admits that he pays only Kshs 15,000/- per term. He justifies this by citing the Ruling of 23 November 2022, which ordered parties to agree on an affordable school. He argues that since Kshs 15,000/= is what he can afford, his liability is capped at that figure.
38. This is a misinterpretation of the Court order. The Ruling stated: "Parties shall consult and settle on a mutually agreed school where the minor should be transferred". It did not state that the Defendant's liability is hereby reduced to KSh 15,000/=. Until the minor is actually transferred or the Order is formally varied to a specific figure, the Respondent remains liable for the actual school fees at the current school as per the Consent Order of March 2021. A party cannot unilaterally vary a court order



- based on their subjective interpretation of affordability. The Respondent is, therefore, in technical contempt of the order to pay school fees.
39. The Appellant relied on M-Pesa statements and Equity Bank slips. For example: VAO-14(g): M-Pesa statement showing payments to Paybill 400222 (Co-op Bank Collection Account) with Account No. 901#04610 and VAO-14(a) - Equity Bank letter confirming transfer of Ksh 10,000/= to Fadhili Junior School.
 40. The trial court erred in dismissing these documents outright. Under Section 106B of the *Evidence Act*, electronic records are admissible. In family proceedings, which are often summary in nature, strict adherence to the formalities of certificate production is often relaxed in the interest of substantive justice. An m-pesa statement showing a direct transfer to a school's official Paybill, referencing the child's admission number, is strong prima facie evidence of payment.
 41. However, the Appellant's application for execution was a composite claim of Kshs 209,675/-, which included Kshs 32,205 for school items (based on forged receipts) and Kshs 24,670/= for medical expenses (based on dubious documents). The principle of falsus in uno, falsus in omnibus (false in one thing, false in everything) applies here regarding credibility. Having found that the Appellant was willing to forge receipts to inflate her claim, the Court is entitled to view her entire computation of arrears with scepticism. An executing court cannot be expected to sift through a basket of fraudulent and valid claims to construct a new decree for the party. The application for execution must be certain and clean.
 42. Therefore, while the Respondent is indeed liable for the full fees, the specific application for execution was rightly dismissed because the Appellant tainted the entire process with fraud. She cannot ask the court to execute a decree based on a mix of truth and forgery.
 43. This appeal highlights a tragic scenario where the best interests of the child are suffocated by the parents' adversarial combat.
 44. The Respondent has failed the minor by unilaterally reducing school fees support, forcing the mother to scramble for funds. He hides behind a review ruling that required agreement, which he failed to secure, to justify underpayment. He is reminded that until the decree is varied, he is liable for the full fees.
 45. The Appellant, however, has committed a graver error. In her desperation or zeal to claim funds, she resorted to forgery. This is criminal conduct. A court of justice cannot be used as a vehicle to profit from fraud. The evidence of the forensic expert stands unchallenged. The medical receipts from an unregistered clinic further compound the lack of credibility.
 46. The trial magistrate's decision to dismiss the claims for school items and medical expenses was legally sound and factually supported by the expert evidence. The dismissal of the school fees claim was also technically correct in the context of an execution application, as the claim was commingled with fraudulent elements, rendering the entire sum sought unsafe to execute.
 47. This Court finds no merit in the appeal. Accordingly, the appeal is dismissed. Each party shall bear their own costs.

DATED AND DELIVERED AT NAIROBI THIS 5 DAY OF DECEMBER 2025

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:



For Appellant: V O in person
For Respondent: E M in person
Court Assistant Lucy Mwangi

