



WM (Minor Suing through His Mother and Next of Friend RMK) v JWW (Family Appeal E003 of 2024) [2025] KEHC 19164 (KLR) (23 December 2025) (Judgment)

Neutral citation: [2025] KEHC 19164 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
FAMILY APPEAL E003 OF 2024
TM MATHEKA, J
DECEMBER 23, 2025**

BETWEEN

WM (MINOR SUING THROUGH HIS MOTHER AND NEXT OF FRIEND RMK) APPELLANT

AND

JWW RESPONDENT

JUDGMENT

1. This matter began in the subordinate court as Children case No. 11/2018.
2. The record shows that the parents herein recorded a consent on 5th September, 2019 in which it was agreed that:
 1. By consent the Defendant shall cater for all that pertains the minor’s education while the Plaintiff shall cater for all other responsibilities.
 2. The minor to continue schooling at xxxxx Primary School and any other school equal to xxxxx in performance ,school fees and other related expenses.
 3. Both legal and actual custody be given to the Plaintiff and
4. Matter be marked as settled and parties bear their own costs.
The Respondent could cater for all the education needs, all that pertains to the education of the child, whereas the Plaintiff/Applicant would care for all the other needs.
3. It would appear that there was non-compliance on the part of the Respondent and on 28th July, 2022, the learned trial magistrate dealt with the matter thus:
 1. The Defendant/Respondent is directed to comply with the consent order of 5th September, 2019 which mandates him to cater for the child’s school fees as well as all that pertains the



child's education which can be spelt out as provision of uniforms, stationery as well as any provision demanded by the school.

2. To ensure compliance and considering the lack of effective communication between the parties, I hereby direct that the school indicates the necessary requirements in the child's fees structure.
 3. The Respondent is directed to present himself at the school to identify such requirements and comply.
 4. Turning to the amount of fees payable, the court notes that the consent order was silent on the amount, there is however indication that the same has been Kshs.20,000/= which increased to Kshs.26,500 when the Applicant decided to board the child.
 5. Accordingly, it is my finding that since the Respondent was not consulted about the decision and bearing in mind that there is no evidence to support the Applicant's contention that the decision arose from a recommendation by the school the Respondent shall continue paying the fees of Kshs.20,000/=. The Applicant shall meet the short fall that will arise from the child's change to a boarder.
4. The court further stated:
- “The court does take judicial notice of the receipt fees increments owing to the prevailing economic indications, accordingly, the Respondents provision of Kshs.20,000/= might change only where the school increases the fees for day scholars.
- As such the Respondent is directed to comply in the event of such change. Parties are encouraged pursue Alternative Dispute Resolution, Alternative Justice Systems and Court Annexed Mediation in this case which involves a minor”.
5. Sometime in 2023 when the child was transition to JSS, the Plaintiff/Applicant sought, through WhatsApp messages from the Defendant/Respondent what the way forward for their child would be. One can see from the running WhatsApp extracted messages which the Defendant/Respondent has not contested that the only issue was the minor's admission to xxxxx school.
 6. All the messages sent by the Plaintiff/Applicant appear to have been responded to through one liners but there is no doubt that the messages were sent to the Applicant's phone to the Respondent line. The Applicant upon failure to receive a response either way from the Defendant/Respondent proceeded to transfer the child from xxxxx School to xxxxx school. From the WhatsApp messages the applicant kept a running information to the Defendant/Respondent on the WhatsApp. The last message was when he had cleared the fees to enable the child obtain a transfer form from the school. He stated “Let him take it for signing”. The fact that the child ended up at xxxxx school is evidence that he completed the fees at xxxxx and the child obtained a transfer letter.
 7. The Respondent however refused to pay any fees/etc for the child at the point of entry and the Applicant did it by herself and filed an application seeking inter alia reimbursement of the fees already paid. The application is dated 12th March, 2024. The learned trial court on 23rd April, 2024 declined the application for reimbursement and but proceeded to state that the Defendant has to continue to cater for the fees of the minor in the new school at a rate equivalent to the one he was paying at xxxxx Primary School and the Plaintiff would meet the balance. The Applicant aggrieved has filed this appeal on the following grounds:
 1. The learned magistrate's finding that consultation was not done was plainly wrong.



2. The learned magistrate erred by holding that the Defendant/Respondent had been fully compliant in terms of fee payment for the minor since the same was paid by the Appellant having taken loans from shylocks.
 3. The learned magistrate erred by holding that the minor was transferred right in the middle of a school term.
 4. The learned magistrate erred in disallowing the prayer on the issue of reimbursement.
 5. The learned magistrate erred by holding that there was no evidence that the Appellant/Plaintiff paid the school fees.
8. The Applicant seeks orders:
The Appeal herein be allowed.
- a. The ruling of the Hon. Jepkosgei Elizabeth Kemei (RM) (Resident Magistrate) delivered on 23rd April, 2024 at Makueni in Makueni Child Case No. 11 of 2018 disallowing the Appellant's application dated 12th March, 2024 and the order emanating therefrom be set aside in its entirety.
 - b. The Honourable court does direct that the Appellant's application dated 12th March, 2024 be heard before a different court or in the alternative the superior court does hear and determine the said application.
 - c. The costs of the appeal herein and the application dated 12th March, 2024 in Makueni Child Case No. 11 of 2018 be allowed to the Appellant.
9. Parties filed written submissions. For the Appellant the issues raised were whether the Respondent was consulted before the child was transferred from the previous school, whether he was transferred midterm, whether the Appellant paid school fees and related expenses after the Respondent failed to comply with the court order, and whether the Appellant is entitled to reimbursement. For the Respondent the issues raised are whether he has been compliant with the court orders on payment of school fees for the child and whether he should reimburse the loan the Appellant allegedly obtained from a shylock.
10. I have carefully considered the submissions by both counsel and issues for determination are:
Whether the Respondent was under an obligation to pay school fees and all the attendant costs of the child's education, whether the Respondent was consulted/informed when the child was transferred from xxxxx to xxxxx ; whether the transfer was punitive to the Respondent; whether the Appellant paid the fees and all related costs to new school; whether the Respondent is liable to refund those costs.
11. I have carefully considered the submissions by counsel for the Respondent. The key complaint there is that the child was transferred from xxxxx to xxxxx is secrecy and without consultation.
12. It is submitted for the appellant that the respondent was consulted through the WhatsApp communication that is attached in the record of appeal which is a demonstration that consultation took place. The appellant relies on CK Vs JMM [2022] eKLR Where it was held that communication through digital platforms is admissible evidence of consultation in matters concerning children
13. It is further submitted that the minor was not transferred in the middle of the term but on the 9th January 2024 which date falls at the beginning of the term ;the court was urged to take judicial notice



- of the Kenya school calendar. It was also submitted that the transfer was made in the best interest of the child under section 8 of the *children act* and article 53(2) of *the constitution*
14. As to whether the appellant paid fees after the respondent failed to comply with the court order, It was submitted that the appellant provided evidence of loan agreements, fee receipts and the school's admission letter in the record of appeal demonstrating that upon failure by the respondent to comply with the court order the appellant had to take loans to ensure that the child remained in school .The appellant relied on SKM versus RPK Civil appeal number E063 of(2022) [2024] KEHC 12516 (KLR) Where the court held that when a parent steps in to cover educational costs in place of a defaulting party Such actions are prima er for share evidence of compliance with parental responsibility
 15. As to whether the appellant is entitled to reimbursement it was submitted that where one party has fulfilled lubrications expressly placed on another by a valid court order reimbursement is proper That this principle was appealed in BWN versus C and M2021 AKLR A reimbursement was granted for school related expenses incurred by apparent in default of the others obligation.
 16. For the Respondent it is submitted that the only two issues are for determination. Whether the respondent has been complainant with the payment of fess for the child; and whether the respondent should reimburse the appellant for the money she allegedly acquired from a shylock.
 17. It is submitted for the respondent that the appellant transferred the child from El Shaddai to xxxxx primary school without informing the respondent and that this offends the principle of the best interests of the child. It is argued that the appellant has no right to unilaterally make such a crucial decision involving the education of the minor without the knowledge of the minor's father and this is in violation of Article 53 of *the constitution* that the said transfer was absolutely punitive to the respondent since it was the respondent who was paying school fees and the abrupt transfer affected the learning of the minor. Further that the fees at xxxxx is relatively higher than that of xxxxx Primary school. The respondent relies on KF vs NB (Civil appeal number 15 of 2021) [2024] KEHC 14587 (KLR) where the court stated that the common thread that runs through both the constitutional and legislative directions regarding matters that deal with children is that the main consideration in matters of children is the best interest of the child the interest of the parent must be subservient to those of the child
 18. It is submitted that the respondent is willing to continue paying school fees for the child as the same as was being paid at El Shadai And that the respondent ought to pay the balance. Relying on SKM versus MWI [2015] eKLR Respondent argues that maintenance orders are not supposed to be punitive or oppressive to any party but ought to be designed to provide for the needs of the child while at the same time respecting the financial status of the parent as a child she can only be maintained within the means of the parents in question
 19. That the record shows that all the school fees at least the latest term when the miner was transferred had been cleared by the respondent and the minor had no outstanding fees balance in the former school as the school confirmed vide a letter Dated 18th March 2024; That the appellant had not produced any evidence to support the claim and that she had paid any fees for the minor on behalf of the respondent; no payment receipts or bank slips linking her to any school fees payment or any school communication requesting fees from her or acknowledging her payment.
 20. The respondent relies on s. 107 of the *Evidence Act* that he who avers must prove and cites SWG vs JGK (Matrimonial Cause E003 of 2021 [2022]KEHC 12675(KLR.) That it would be unfair and unjust just condemn the respondent to reimburse the Appellant for the sums of money which was not used to pay school fees and that the appellant was using the minor's education needs to obtain money from the respondent while hiding behind alleged loans from some shylocks.



21. The issues for determination are whether there was consultation in the transfer of the child ; whether the Respondent had been fully compliant payment of fees for the child ; whether the child was transferred in the middle of a school term; whether the appellant is entitled to reimbursement of the fees paid for the child; whether the appellant produced evidence of payment of fees.
22. There is evidence of communication about the transfer: it was neither secretive nor in the middle of the term.
23. The record shows that one of the annexures by the Appellant WhatsApp communication between the parties. The Respondent could have easily engaged the Appellant on the same so that they would discuss the education of their child. However, from the WhatsApp chat thread, what emerges is that he neglected to respond to the questions by the Appellant but it is clear that he was made aware of the intended transfer and the transfer. He was asked whether fees had been cleared to enable transfer forms to be signed and he confirmed that he had cleared the fees. It is ingenious for him to turn around and argue that the transfer was in secrecy and without consultation. It is not evident from his response whether there was another communication channel was available for the Appellant to him to enable them discuss the issue? What else the applicant could have done in the circumstances other than to make the decision by herself knowing that he was aware of what was about to happen.
24. The record from the subordinate court shows that the Respondent has had zero interest in the child other than the mechanical payment of school fees. I have seen from the record that his defence for not getting involved with the child is because he was born during the subsistence of his marriage to another person, that he has other children at university, at high school.
25. That is not ok, neither is it acceptable for a parent in view of the parental duties both natural and Constitutional:
26. The parents herein should listen to the to Article 53 of *the Constitution* rendered in the voice of their child:
 - (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
 - (2) A child's best interests are of paramount importance in every matter concerning the child
27. One can see that the *Children Act* and *the Constitution* of Kenya 2010 gives the child equal rights with the children of the respondent's marriage. The fact that he is not married to the child's mother does not take away his parental responsibility with the mother. It is about the child, and not about his relationship with the mother.



28. According to Article 53 of Constitution the parents over him that 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 at 53 (2) that a child's best interests are of paramount importance in every matter concerning a child.
29. The respondent had not complied fully with the order of the subordinate court on education needs of the child. It was the responsibility of the Respondent to bear all the costs of the child's education. This was from the consent order entered into by the parents: the respondent was the one to shoulder the education needs of the child. It means the duty and responsibility of the Respondent to seek the best education available for his child within his means . The moment the one parent proposed the transfer, he should have engaged, but it appears to me because he considers this child as peripheral, he could not have been bothered. I have seen through the record that the trial court had to direct him to school and introduce himself and obtain information from the school about the child's needs.
30. I sought from the respondent evidence that he had complied with the education order and allowed him to file an affidavit to that end and to even explain himself. However, I have not found any evidence that he indeed went to the school to do ;that introduce himself , or to obtain the information that he was directed by the subordinate court to obtain from the school. Without any contact with the school and the child how would he know the wishes of his child? If the child needed go to boarding school how would he know if he did not engage? I noted he did not know the age of the child , saying he was 10 yet he is 14.
31. He ought to have engaged with the appellant so that it would be agreed on how the child would enter the new school. I noted that the school fees was below Ksh 20,000 and it was not trues that it was oppressive. The respondent to his credit has continued to pay the fees even in the new school but has not bothered to find out what the education needs of his child are.
32. In addition, I noted that trial court had limited the payment of school fees to that of day scholar at xxxxx at Kshs.20,000/= but noted that the fees could increase for day scholars. The trial court also noted that the consent was silent on the amount of fees payable and capped fees at Kshs.20,000/=. I noted from the explanation made by the respondent at the behest of the court and the annexures that he was paying fees in instalments of Ksh 10,000. However, there was no evidence of making any other payment in relation to the education needs of the child.
33. The fact is this child was in a private school. Fees is not the only thing a child need. While in school, there are books, uniforms, education trips, etc. These items cannot be capped on school fees and it is my view that this capping was not in the best interest of the child's education.
34. When the parents entered into the consent, and left it open, they knew what it means and it was not for the court to change that.
35. It is my finding that the respondent has not complied fully with the order of the subordinate court on the providing of the education needs of the child.
36. When the child was transferred there were extra costs incurred. The respondent has not demonstrated that he paid any part of those extra costs which formed part of the education needs of the child.
37. The respondent owes the appellant a reimbursement of the expenses on education needs of the child incurred regardless of the source of the money for as long as she can establish the fact of spending the money on the education needs of the child.
38. However, the fact that the child would be school for better part of the year reduces on the appellant's spending on the child's other needs while at home. It is my considered view that this fact should



considered in determining what the respondent would be paying for the boarding of the child. This is necessary to avoid a situation where that financial burden is not borne equitably. This should be balanced with the fact that the child's other needs- emotional and psychosocial are met by one parent.

39. In view of the foregoing the appeal succeeds in the following terms;

1. The parents have equal parental responsibilities though not being married to each other. They have a duty to enter into a parental responsibility agreement as provided for by s33 of the *Children Act*:

Parental responsibility agreement

1. Parents of a child and who are not married to each other may enter into a parental responsibility agreement, in the prescribed form, whereby both, in the best interests of the child, designate and agree on clear individual responsibilities towards the child.
 2. An agreement under subsection (1) may be in the nature of a parenting plan in which the parents specify—
 - (a) how the child or children shall spend time with each parent;
 - (b) how the parents shall make joint decisions on matters relating to their respective parenting responsibilities, including religious upbringing;
 - (c) contact information;
 - (d) visitation schedule;
 - (e) holiday and school break schedule;
 - (f) transport and travel within and outside Kenya;
 - (g) responsibility for health insurance and healthcare services;
 - (h) the need for notification of parental movement in cases where either or both parents relocate or change residence;
 - (i) the manner in which decisions relating to the education of the child shall be made; and
 - (j) the joint and several responsibilities expenses for extra-curricular activities of the child.
2. The child herein has equal rights to any of the respondent's other children whether born in or outside wedlock.
3. The child was transferred from xxxxx to xxxxx with the full knowledge and concession of the respondent
4. The respondent is responsible for all the educational needs of the child. It is his duty to obtain the full requirements from the school and to comply with the same. It is also his responsibility to come to a consent with the school as to how he will be paying school fees so as not to inconvenience the child. The matter be mentioned before the Children Court for compliance within 14 days of the opening of school in 2026.



5. The appellant is entitled to reimbursement of the monies spent on the educational needs of the child when the respondent failed to do so. The matter is remitted to the Children's court for the hearing and determination of this issue, the issues as what happens to the appellant's contribution while the child is in boarding school, and the Appellant's application dated 12th March, 2024 on merit. The matter be heard on priority at the earliest date. Mention before the Children Court within 7 days hereof for a hearing date.
6. The parties herein are encouraged, in the best interest of the child to seek mediation to come up with a parental responsibility agreement. As per s. 31 of the Act Parental responsibility includes
 1. Equal parental responsibility
 - (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.
 - (2) The duties referred to in subsection (1) include, but are not limited to—
 - (a) the duty to maintain the child and, in particular, to provide the child with— basic nutrition; shelter; water and sanitation facilities; clothing; medical care, including immunization; basic education; and general guidance, social conduct and moral values;
 - (b) the duty to protect the child from neglect, abuse, discrimination or other differential treatment;
 - (c) the duty to—
provide parental guidance in religious, moral, social, cultural and other values that are not harmful to the child; determine the name of the child; procure registration of the birth of his or her child; appoint a legal guardian in respect of the child; receive, recover and otherwise deal with the property of the child for the benefit, and in the best interests, of the child; facilitate or restrict the migration of the child from or within Kenya; upon the death of the child, to arrange for the burial, cremation of the child or any other acceptable method of interment; and
 - (d) the duty to ensure that, during the temporary absence of the parent or guardian, the child shall be committed to the care of a fit person.
7. The respondent is encouraged to establish a parental relationship with the child as envisaged by the *Children Act* so as to fulfil the above parental responsibilities.
8. Each party to bear its own costs

DATED, SIGNED NA DELIVERED VIS CTS ON 23RD DECEMBER 2025

MUMBUA T MATHEKA

JUDGE

CA Chrispol

