



**Amin v Guyow (Civil Appeal E004 of 2025)
[2026] KEHC 180 (KLR) (20 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 180 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CIVIL APPEAL E004 OF 2025
JN ONYIEGO, J
JANUARY 20, 2026**

BETWEEN

SAID MOHAMED AMIN APPELLANT

AND

UBAH AHMED GUYOW RESPONDENT

*(Being an appeal from the judgment and decree of Hon. Xavier Baraka
(R.M.) delivered on 18.07.2025 in Children Case No. E053 of 2024 at Wajir)*

JUDGMENT

1. By a plaint dated 23.10.2024, the respondent moved the trial court averring that her intimate relationship with the defendant/appellant bore a minor, Masuud Said Mohamed, subject of the proceedings herein. That the appellant, a contractor who owns several vehicles and therefore a person of means has abdicated his responsibilities to the said minor thereby occasioning her untold pain and suffering contrary to the provisions of the best interests of a child as envisaged by the law. That she is not in any gainful employment and has therefore been compelled to rely on good will of her relatives who have been providing her with accommodation and the child's maintenance.
2. Additionally, that the appellant had totally declined availing his identification card to the respondent to enable the acquisition of the birth certificate of the minor.
3. PW1, Ubah Ahmed Guyow stated that she resides in Wajir and is currently unemployed thus relying on her mother for support. She stated that she knows the defendant, Said Mohamed Amin, and that they have one child together, Masuud Said, who was born on 20.10.2022. She stated that during her pregnancy, she was in Nairobi and therefore received financial assistance from Abbey, a relative of the appellant. She further stated that she has no personal relationship with Abbey beyond the assistance provided.



4. She went further to state that the child does not have a birth certificate hence urged the court to assist in obtaining one. She claimed that the defendant has not denied paternity but has refused to provide his identification card because the child was born out of wedlock. She further disclosed that after delivery, she received Kes. 200,000 from elders on the appellant's side as maslaha for impregnating her outside marriage.
5. During cross-examination, Ubah confirmed that she was never married to the defendant and has no documentary proof of paternity, though she is willing to undergo DNA testing. She admitted receiving Kes. 10,000 monthly from Abbey until August 2024. She reiterated that the Kes. 200,000 lump sum was separate from her claim. She acknowledged not registering the child's birth and that she had no proof of the defendant's occupation as a contractor. She stated that the child is currently suffering from asthma but nevertheless conceded that illness and clothing needs are not guaranteed monthly although food and shelter are the most pressing needs.
6. PW2, Shinala Adan Ali adopted as his testimony in chief his statement dated 7.02.2025 in which he confirmed attending elders' meeting which ordered the appellant to pay kes 200,000/= as pregnancy compensation to the respondent. During cross-examination, he explained that he was uncertain about the existence of a marriage between the parties, and that after deliberations, it was found that the defendant had not married the plaintiff. He recounted that there had been two meetings before elders in October 2024, partly concerning the child's maintenance, and that as a result of those meetings the defendant, through the elders, paid Kes. 200,000. He added that no minutes were recorded in either meeting.
7. On re-examination, he said the defendant had claimed the child was born out of wedlock, while the plaintiff admitted she had no document to prove paternity. He noted that the plaintiff's family was aggrieved by the child being born out of wedlock, and that the payment of Kes. 200,000 was therefore made as reparation.
8. DW1, Hassan Amin adopted his statement dated 13.12.2024 as his testimony. He stated that the sum of Kes. 200,000/= was meant to support the minor. On cross-examination, he stated that there was a meeting held concerning a child who was alleged to be the defendant's, though there was no proof of paternity since no DNA test had been conducted. He said the elders nevertheless resolved that, even without scientific confirmation, the child could not simply be disregarded. According to him, the defendant himself was uncertain whether the child was his and had not attended the meeting. Amin noted that the money was paid to Ubah with the hope that she would use it to support the child, as directed by the elders.
9. DW2, Said Mohamed Amin the appellant herein stated that he came to know Ubah in 2022 through a lady called Nasri. He adopted his statement dated 13.12.2024 as his evidence in chief. He told the court that he and Ubah met only once sexually and thereafter did not communicate until three months later, when she informed him that he was the father of her child. He recounted that the respondent had asked for a house in Nairobi, which he provided by paying rent for three months, after which she requested to move to Mandera to live with her mother. He said that Ubah later informed him through his relative and witness, Abdi Abdullahi, that she had delivered, and he instructed Abdi to send Kes. 15,000 for her hospital discharge.
10. He added that he had been sending Kes. 10,000 per month through Abdi via M-Pesa as child support and had also given Kes. 200,000 after Ubah complained about insufficient funds for her upkeep. He explained that the area chief, Duale, summoned his family and asked him to confirm whether he had married the respondent, which he denied. He said the elders remarked that the child resembled him and directed that he should pay the upkeep. He stated that he borrowed Kes. 200,000 from his brother



for the child's maintenance but emphasized that he was only capable of paying Kes. 3,000 per month. He prayed that the Kes. 200,000 already paid be recorded as part of child maintenance.

11. On cross examination, he stated that he was not married to the respondent apart from the single sexual encounter they had. He explained that he had neither accepted nor denied the child but had been supporting the child by paying Kes. 10,000 per month through Abbey. He added that he had not given the respondent his identification card because he feared stigmatization and that he preferred that the child remain in Mandera. He further stated that he stopped sending the monthly Kes. 10,000 in the month when he paid Kes. 200,000, as he was repaying that amount. He opposed the use of his name in relation to the minor.
12. By a judgment delivered on 18.07.2025, the trial magistrate ordered as follows:
 - i. With the foregoing in mind, with regards to custody, the court grants the mother/plaintiff actual custody of the child herein. Further, whereas the court is not convinced that the defendant is fit to be allowed legal custody of the child, the court allowed defendant/Said the benefit of doubt and allows him legal custody. The plaintiff/Ubah is therefore granted actual custody. With regards to legal custody, both the plaintiff and the defendant are allowed legal custody. Defendant/Said is allowed visitation rights of the child in consultation with the plaintiff.
 - ii. Regarding maintenance, with reference to food, milk, diaper, plaintiff shall cater for Kes. 1,000.00. The defendant shall on the other hand cater for Kes. 9,000/-. The defendant shall send his part to the plaintiff on or before 5th of every month.
 - iii. With regards to clothing, court direct that the plaintiff shall cater for the clothing needs of the child to the tune of Kes. 6,000/- as prayed. Defendant is at liberty to purchase clothes or send any funds towards this need.
 - iv. The court therefore directs the plaintiff and the defendant to immediately register as per the social Health *Insurance Act*, 2023 and include the minor as a beneficiary to the government medical scheme. The plaintiff and the defendant are ordered to pay the monthly subscription and cover the minor's medical needs through the government scheme. For avoidance of doubt, the minor's medical needs are to be catered for by the plaintiff and the defendant.
 - v. Regarding housing, court was not convinced that the plaintiff requires any support. In this regard therefore, plaintiff is to cater for the Kes. 8,000/- as prayed.
 - vi. With regards to paternity and handing over of identity card, court directs that a declaration of paternity cannot be conclusively made with the present information. Equally, court cannot at this juncture order the handing over of the defendant's identity card as he has not been declared to be the father. Court however directs that parties undertake a DNA test and may approach court vide a relevant application once the results are out.
 - vii. Ubah has not unjustly enriched herself and the prayer for restitution cannot issue.
 - viii. Each party to bear own costs.
13. The appellant being dissatisfied with the said judgment, filed a memorandum of appeal dated 23.07.2025 listing the following grounds:
 - i. That the learned magistrate erred in law and in fact in finding the appellant liable to pay Kes. 9,000.00/- in child maintenance without proof of paternity.



- ii. That the learned magistrate erred in law and in fact in finding the appellant liable to pay Kes. 9,000.00/- in child maintenance without conducting a needs assessment of the parties.
 - iii. That the learned magistrate erred in law and in fact in directing that a DNA test be done, post judgment.
 - iv. That the learned magistrate erred in law and in fact in ordering for a DNA test suo moto thereby denying the parties an opportunity to be heard over the intrusive issue of DNA.
 - v. That the learned magistrate ignored relevant evidence in holding that the respondent had not unjustly enriched herself.
14. Reasons wherefore, the appellant prayed for orders:
- i. That the appeal be allowed.
 - ii. That the judgment delivered by the Honourable Magistrate be set aside.
15. The appeal was disposed by way of written submissions.
16. The appellant via submissions dated 16.10.2025 urged that the trial court had erred both in law and in fact when it ordered him to pay Kes. 9,000.00/- in child maintenance without proof of paternity. That the magistrate having expressly acknowledged that paternity was not proved, parental responsibility could not arise. The appellant maintained that parental obligations could only arise once paternity was established, for example through DNA testing, and therefore the order was unfounded.
17. He further contended that the trial court had failed to conduct a needs assessment before assigning financial responsibility. That although he had testified that he could only afford Kes. 3,000.00/- per month, the court imposed Kes. 9,000.00/- without justification and in total disregard of his financial circumstances.
18. The appellant also submitted that the trial court had erred by directing a DNA test after delivering judgment. He argued that once judgment was issued, the court became functus officio and could not reopen the trial or admit new evidence. In his view, ordering a DNA test post-judgment violated this doctrine. Additionally, he faulted the court for ordering the DNA test suo moto, without an application from either party and without affording them an opportunity to be heard. He maintained that this unilateral decision infringed his constitutional right to a fair hearing.
19. It was further urged that the trial court had ignored relevant evidence regarding unjust enrichment. The respondent admitted receiving the money, yet the court held that it did not amount to unjust enrichment. The appellant insisted that the sum should have been accounted for. In conclusion, he prayed that the appeal be allowed and that the judgment by the trial court be set aside.
20. The respondent filed submissions dated 11.11.2025 urging that the appellant had long assumed parental responsibility for the minor, having consistently provided monthly support of Kes. 10,000.00/- for nearly two years. Counsel argued that this conduct amounted to an acknowledgment of fatherhood, even though the appellant hesitated to admit paternity publicly for fear of social stigma. It was emphasized that the trial court rightly found that the appellant could not disclaim responsibility, since his actions demonstrated acquired parental responsibility under the *Children Act*.
21. The respondent further stated that the magistrate had acted correctly in ordering child maintenance of Kes. 9,000.00/-, noting that the appellant had previously contributed a higher amount voluntarily and therefore could not claim inability to pay. On the issue of documentation, counsel opined that the respondent had sought to have the child registered with the appellant's particulars, but the court



insisted on a DNA test to conclusively establish paternity. Counsel maintained that such a test would safeguard the child's constitutional right to identity, inheritance, and health, citing the cases of S.K.S. v J.J.K. Eldoret Civil Appeal No. 77 of 2008 and FKW (suing as the mother and next friend of GDW v D.M.M [2015] eKLR where the court observed that children are entitled to know their parents.

22. Turning to the allegation of unjust enrichment, the respondent's counsel contended that the sums advanced by the appellant were strictly for the child's upkeep and were voluntarily given. That the court correctly rejected the appellant's claim since the payments did not meet the legal threshold for restitution or unjust enrichment.
23. In conclusion, counsel urged this court to uphold the trial court's findings, stressing that the best interests of the child must prevail over the appellant's personal apprehensions, and that the appeal should be dismissed with costs.
24. This court being a first appellate court, has a duty to re-evaluate and re-examine a fresh the evidence tendered before the trial court and make its independent determination [See Peters v Sunday Post 1958 (EA) 424].
25. I have considered the grounds of appeal herein together with submissions of both parties and the record at large. Issues that a rise for determination are;
 - a. Whether paternity was established
 - b. Whether the appellant is bound to discharge his parental responsibility
 - c. Whether the trial court had the mandate to order for DNA testing of the appellant after delivery of judgment
 - d. Who is entitled to legal and or physical custody of the child.
 - e. Whether the minor is entitled to registration documents in the appellant's name as the father.
26. The appellant faulted the trial court for ordering that he pays maintenance to the minor herein despite paternity not being proven. From the evidence before the court, the respondent alleged that the appellant was the father of her child in as much as she did not provide any evidence. On the other hand, the appellant did not dispute the allegation but the same notwithstanding, it was outright that he feared stigmatization of being associated with a child sired out of wedlock. In the same breadth, it was his evidence that previously, he provided maintenance of the child in question by sending Kes. 10,000.00/- to the respondent on a monthly basis. Thus the genesis of the suit herein was precipitated by the fact that he stopped remitting the said monthly contributions.
27. Section 101 (e) of the Childrens Act stipulates as follows:

“Where the mother and father of a child were not married to each other at the time of birth of the child, and have not subsequently married and where the father or mother of the child have acquired parental responsibility of the child, it shall be the joint responsibility of the mother and father of the child to maintain that child”.
28. Similarly, in the case of PAN v EN (Civil Appeal 63 of 2019) [2025] KEHC 14364 (KLR) at para 56, the court stated as follows:

“As already observed, the Respondent bore the minor herein out of wedlock when she was married to one PMM (deceased). A fact the Respondent did not deny at all. The Respondent, the minor, PMM and the Respondent's four (4) daughters lived together as



one happy family until 11th January 2011, when unfortunately, PMM passed away. When the minor was born, PMM provided for and assumed parental responsibility for the minor. I am guided by the case cited by the Respondent in *ZAK & Another v MA & Another* [2013] eKLR, where the court held that step parents could assume parental responsibility in certain circumstances based on Article 53 (2) of *the Constitution*. In the circumstances of this case, it is my view that the best interests of the minor could only be taken care of and provided for by PMM as the step father. During that period, the said step father provided for the minor and therefore acquired parental responsibility over the minor, whom he assumed to be his biological child sired out of his marriage to the Respondent...”

29. From the testimony of Pw1, she had an intimate relationship with the appellant giving rise to the minor herein. Equally, the appellant admitted by stating that he had a sexual encounter with the respondent once. Consequently, the appellant paid for pw1’s maternity expenses to the tune of kshs 15, 000/= and thereafter continued with monetary support at kshs 10.000/= per month. He however stopped paying after he was ordered by elders to through maslaah to pay a global sum of 200,000/=. It is through the foregoing action that the respondent maintains that the appellant assumed and consequently acquired parental responsibility to the minor.
30. In the circumstances of this case and by his own conduct, the appellant assumed parental responsibility for over a period of 2 years now. It is not mandatory that one must be a biological parent to assume parental responsibility. In my honest view, even before the issue of paternity is conclusively determined, the appellant shall continue discharging his parental responsibility as he has been doing till such time that paternity would have been resolved. Assumption of parental responsibility is not confined to biological parents only.
31. It cannot be possible that the appellant was maintaining the baby without any good reason. He cannot just abruptly withdraw without reason. As to the amount ordered being excessive and without assessing his sources and means of income, it is a self-defeatist argument considering that he is the one who came up with the figure of Kshs 10,000/= per month. He cannot run away from it. In fact the court even did reduce the amount to Kes 9,000/=. I have no reason to interfere with the amount ordered.
32. On whether the trial court erred in ordering for the DNA, the appellant urged that ordering for DNA test to be done post judgment was akin to erroneously re-opening the trial. The respondent on the other hand urged that the appellant was the father of the child as he had acquired parental responsibility noting that all along he provided for the minor.
33. The court in the case of *Mbogo v Shah* (1968) 93, *De Lestang VP* (as he then was) observed at page 94.

“I think it is well settled that this Court will not interfere with the exercise of its discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which it should not have acted or because it has failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion”.
34. In the case of *P. K. M v Senior Principal Magistrate Children’s Court at Nairobi & another* [2014] eKLR and that of *R.K v. J.K & Another* [2016] eKLR, it was held that a DNA test cannot be ordered as a matter of course and that it should only be ordered in circumstances where the same is ‘eminently needed to establish the truth and reach a just conclusion in the matter absent any other form of evidence and a prima facie case warranting the order ought to have been established first.



35. Similarly, in the case of FKW (suing as the mother and next friend of GDW (Minor) v DMM [2015] eKLR, Ngaah J. stated as follows; -

“What all these decisions point to is that where it is in the best interests of the child that a paternity test should be undertaken; where there is no other means of determining the father of a child other than by means of a paternity test and therefore where such a test is necessary in the circumstances and, where, in any event, the applicant has made out a prima facie case for such a test, then a court of law will ordinarily make an order for such a test. Looking at the applicant’s case from this perspective, there is no doubt that it is in the best interests of the subject child that the DNA test should be taken. It is the child’s constitutional right and he is better of growing up with the knowledge of who his parents are. As noted earlier there is no other way of determining who the father of the subject child is apart from conducting a DNA test and therefore this test is necessary in the circumstances of this case.”

36. Again, in the case of AWM v LNG [2024] KEHC 12128 (KLR), the court held that:

“I have carefully analyzed and considered the parties’ submissions in support of their respective positions. It is clear from the pleadings and proceedings in the lower court that the suit is one for custody and maintenance and that the same is based on the assertion by the Respondent that the Appellant is the biological father to the minors. The Appellant on the other hand denied paternity.

In my view, the best way of resolving the issues is to conduct a DNA test. The test will not only help in resolving the dispute before the trial court, but will also help the minors know who their biological father is. This is a constitutional right which cannot be taken away from the minors’.

37. As such, it is my view that the best way of resolving the issue above is to conduct a DNA test. The test will not only help in resolving the dispute before the trial court, but will also help the minor know who his biological father is which is a constitutional imperative. The same being the minor’s constitutional right, it is my belief that it shall also settle the question whether the appellant ought to render his details towards the acquisition of the minor’s birth certificate.
38. As to the question that the court is functus officio hence had no jurisdiction to re-open the case after delivery of judgment, the court is of the view that children courts have residual powers to make orders post judgment. That is why under Section 116(3) of the children’s Act, a court can review its orders for periodic maintenance orders if there are significant changes of circumstances. Equally, Section 119 of the *children Act* does empower a children court to make post judgment orders in a children matter.
39. In practice, interlocutory applications and or orders post judgment are normal and a permanent fixture in children matters. In other words, where the best interests of a child demands, post judgment orders or proceedings are a normal occurrence in children matters. Article 53(2) of *the constitution* is critical. It provides that a child’s best interests are of paramount importance in every matter concerning the child.
40. Section 8(1) of the *children Act* 2022, also underscores the best interests of a child principle in every decision made by either the court, administrative or legislative bodies. Therefore, it is my finding that children matters are unique and therefore procedural technicalities do not apply. See Article 159(2) (d) of *the constitution*. In a nutshell, the order for DNA is the ultimate key to determining full rights to the minor including generational identity, custody, maintenance and inheritance.
41. The appellant will not suffer prejudice by undergoing DNA test. It is all about ascertaining the truth hence the essence of justice being seen to be done. As to whether the court erred by making the order



suo motto, in my view, there is nothing wrong about it. The court had jurisdiction to hear the matter and therefore the power to make any directions or orders whether suo motto or otherwise in the interest of justice.

42. On whether the respondent had unjust enrichment, Justice C. B. Madan, in the case of Chase International Investment Corporation and Another v Laxman Keshra and 3 others [1978] eKLR in the Court of Appeal at Nairobi restated the well settled principle of unjust enrichment as follows:

“According to Goff and Jones, Law of Restitution, the principle of unjust enrichment presupposes three things (1) that the Defendant has been enriched by the receipt of a benefit (2) that he has been so enriched at the expense of the Plaintiff and (3) that it would be unjust to allow him to retain the benefit. I think the circumstances of his case are such that the principle would apply and would justify an order that Chase do pay for the benefit it received from the two lodges built or completed at the expense of Laxmanhai”.

43. In the instant case, it was not controverted that the appellant paid Kes. 200,000.00/- to the respondent. The respondent and equally PW2 stated that the said amount was paid as an apology and or for restitution while the appellant together with DW1 stated that the said amount was paid towards the upkeep of the minor. According to the respondent, the amount was paid to her for being impregnated out of wedlock. In my view such reasoning should not stand having in mind that the parties herein being adults, they should and/or ought to be responsible for their respective actions and consequences arising therefrom. It is trite that a party should never be allowed to benefit from an illegal transaction. [See Haile Menkerios v Mureithi & another; Wina Trading Company Limited & another (Third party) [2024] KEHC 13993 (KLR)].
44. I do not find the argument of self-enrichment applicable in the circumstances as there was no coercion on the appellant’s part. He willingly honoured the elders’ directive as pregnancy compensation which is different from maintenance.
45. Having held as above, it is my finding that the appeal herein is devoid of merits hence dismissed. As such the judgment and orders of the trial court are upheld and the appellant to comply with the trial court’s orders. Costs are awarded to the respondent.

Dated, signed and delivered virtually this 20th day of January 2026.

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J. N.ONYIEGO

JUDGE.

