



**JM v MN (Civil Appeal E150 of 2024) [2026] KEHC 1501 (KLR)
(Family) (13 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 1501 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
CIVIL APPEAL E150 OF 2024
PM NYAUNDI, J
FEBRUARY 13, 2026**

BETWEEN

JM APPELLANT

AND

MN RESPONDENT

(Being an Appeal from the Judgment of the Hon. Jackie Kibisia Principal Magistrate in Children’s Court at Nairobi in Children’s Case No. 292 of 2023 delivered on 25th October 2024)

JUDGMENT

1. Vide Memorandum of Appeal dated 6th November 2024, the Appellant herein challenges the decision of the Hon. Jackie Kibosia Principal Magistrate in Children’s Court at Nairobi in Children’s Case No. 292 of 2023 delivered on 25th October 2024 on the following grounds-
 1. That the learned Magistrate erred in law and fact by ordering the appellant herein to continue contributing a sum of Kshs 15000 towards maintenance of the Minor without carefully considering the current financial status of the appellant vis-à-vis the financial status of the respondent herein.
 2. That the learned Trial Magistrate erred in law and in fact by ordering the Appellant herein to continue contributing a sum of Kshs 15000 towards maintenance of the Minor which sum was unjustifiable and oppressive to the appellant in the circumstances since parental responsibilities had been clearly apportioned.
 3. That the Learned Trial Magistrate erred in law and in fact by failing to scrutinize the evidence produced by the Appellant by an affidavit of means in arriving at the figure of Kshs 15,000 as the Monthly contribution apportioned to the appellant.



4. That the Learned Trial Magistrate erred in law and in fact by failing to allow the appellant removed access of the minor while in the Country as prayed for in his pleadings despite the compelling evidence adduced by the appellant as to the peculiar circumstances warranting the said removed access.
 5. That the trial Magistrate's judgement was arrived at in a cursory and perfunctory manner without properly analysing the evidence presented by the appellant thereby arriving at a decision that is not in the best interest of the minor.
2. In the impugned judgment the The Appeal was canvassed via written submissions. The submisrial Magistrate made the following orders-
1. That both parties shall have joint legal custody of the minor herein with the Defendant/ mother retaining actual custody , care and control.
 2. None of the parties shall leave the Court's jurisdiction with the Child without the express consent of the other or without a court order.
 3. That the Child is placed under Court mandated therapy. Parties to pick a therapist of Choice 30 days from today's date. Incase they do not settle on one within the specified period, to contact the Court Administrator for appointment. Cost of therapy will be paid as a medical expense.
 4. Access to the plaintiff/ father will be achieved on the following terms:-

While in Kenya (after therapy):
 Alternate weekends: Saturdays 10.30am to 4.30pm (access will be enhanced progressively depending on the therapist's guidance)pick up/ drop off: nearest recreational facility to the child.Half school holidays alternating Christmas and Easter.

While abroad
 Audio visual contact: alternate days between 5.30pm and 7.30pm (dependent on the therapist's guidance)1. That this being a family matter, no order as to costs.2. Parties at liberty to apply

Apportionment of Parental Responsibility

Plaintiff15,000/- pm contribution towards maintenance (this is maintained)School fees and related expensesComprehensive medical cover (including counselling)

Defendant
 Shelter and utilitiesFoodclothing
3. The appellant's appeal seeks to enhance his weekend access to the minor to extend to a pick up on Friday and return on Sunday on alternative weekends. He also seeks that the judgment be revised to give him ' removed access' for half the school holiday and on alternating Christmas and Easter holidays. He wishes to be absolved from paying the Kshs 15000/- monthly maintenance.

Analysis

4. This is a first appeal. The duty of a first appellate Court was succinctly stated by Hon. M. Odera J in [*Njoroge v Gakere & another*](#) [2025] KEHC 4048 (KLR) in the following words:
 - (14) Therefore the appropriate standard of review in cases of appeal can be summarized in the following three principles:-



- (1) On first appeal the court is under a duty to reconsider and re-evaluate the evidence on record and draw its own conclusions.
 - (2) In reconsidering and re-evaluating the evidence of the first appeal court must bear in mind and give due allowance for the fact that the trial court had the advantage of seeing and hearing the witnesses.
 - (3) It is not open to the first appellate court to review the findings of a trial court simply on the basis that it would have reached a different conclusion had it been hearing the matter for the first time.
5. By plaint dated 17th February 2023, the appellant sought orders *inter alia* requiring that the respondent be compelled to avail the minor; the Court issue orders enforcing the appellant's right to access the minor. In her Defence and Counter claim, the respondent sought the following orders; Legal and actual custody be granted to her, reasonable access be granted to the appellant; the appellant provide maintenance of the minor by providing for school fees and related expenses, Shelter, medical expenses and utilities and entertainment. Pleadings closed with the appellant filing reply to defence and defence to counterclaim, wherein he sought legal and actual custody of the minor, access to the minor and dismissal of the counterclaim.
 6. The matter proceeded to hearing with both the appellant and the respondent testifying as sole witnesses for their respective cases. Both the applicant and the respondent filed affidavit of means, showing that they were both literally living from hand to mouth. At the conclusion of the trial the Court interviewed the minor who was aged 9 years at the time.
 7. The appeal was canvassed via written submissions. The Appellants submissions are dated 19th August 2025. The issues framed for determination are-
 1. Whether the Learned Trial Magistrate erred in law and in fact by ordering the appellant herein to continue contributing a sum of Kshs 15,000/- monthly towards the maintenance of the minor without carefully considering the current financial status of the applicant vis-à-vis the financial status of the respondent herein
 2. Whether the Learned Trial Magistrate erred in law and in fact by failing to allow the Appellant removed access of the minor while in the Country as prayed for in his pleadings despite the compelling evidence adduced by the appellant as to the peculiar circumstances warranting the removed access.
 8. On the first issue the appellant submits that the amount of maintenance ordered is simply beyond his means and relies on the decision in SKW v MWI [2015] eKLR for the assertion that the same is manifestly punitive.
 9. On the 2nd issue it is submitted that access on the terms proposed will enable him have sufficient time with the minor.
 10. The respondent's submissions are dated 25th August 2025 and she frames the following as the issues for determination-
 1. Whether the Learned Trial Magistrate erred in law or fact in ordering the Appellant to continue contributing Kshs 15000 per mont towards the maintenance of the minor?
 2. Whether the trail court erred in law or fact in decling to grant the Appellant removed access to the minor?



3. Whether the Appellant has demonstrated sufficient grounds to warrant inference by this Honourable Court with the Trial Court's findings.
11. On the 1st issue it is submitted that the amount is reasonable and in the best interests of the child that the maintenance be retained at that figure. Reference is made to the decisions in [CIN v INN](#) [2014] eKLR and [MOA v HAO](#) [2021] KEHC 12577 (KLR) on parental responsibility to provide for children.
12. On the 2nd issue, it is submitted that the Court was informed by the Child's preferences in refusing to grant removed access. Reference is made to the Supreme Court decision in [MAK v RMAA & 4 Others](#) (Petition 2 (E003) of 2022) [2023] KESC 21 (KLR) on the necessity of supervised access in appropriate cases.
13. On the 3rd issue it is submitted that the legal threshold that would allow this court to interfere with the exercise of discretion by the trial Court has not been met, reference is made to the decision on [Njiru & Another v Kange'the](#) (Civil Appeal E493 of 2023) [2025] KEHC 357 (KLR) (Civ) (23 January 2025) (Judgment).

Determination

14. Having considered the pleadings herein, submissions filed and the relevant law, I frame the following as the issue for determination-
 1. Whether the it is in the best interest of the Child to allow the appeal?
 2. What if any are the consequential orders arising from (1) above?
15. On the 1st issue, in considering this appeal I am well guided that the primary consideration has to be the best interests of the child. It is trite that in every decision undertaken concerning a child, the best interest of a child should be considered. This position is clearly captured in the [UN Convention on the Rights of the Child](#) and the [African Charter on the Rights and Welfare of the Child](#). The same has also been captured under Article 53 (2) of the [Constitution](#) of Kenya as follows:

" a child's best interests are of paramount importance in every matter concerning the child."
16. The same was well articulated in the case of [MAA v ABS](#) [2018] eKLR, where it was held as follows: -

.... While considering this matter, this Court is alert to the welfare of the children herein who are of tender years. The matter is not about the applicant/appellant and the respondent; and their interests are secondary to those of the child. The foregoing provisions require this Court to treat the interests of the child as the first and paramount consideration and must do everything to *inter alia* safeguard, conserve and promote the rights and welfare of the child herein. Acting in the best interest of the children in question.
17. Is it therefore in the Child's interest to withdraw the maintenance of the father towards her? The amount is Kshs 15000/- per month, this works out to Kshs 500 per day. The amount is not exorbitant. The appellant states that this is way beyond his means and makes reference to his affidavit of means and changed circumstances. I must weigh this plea against his parental obligation to provide for the child and the implications for the child if this support is withdrawn. In my opinion it will not augur well for the minor and this will definitely not in her interests. For this reason I decline to interfere with the trial courts decision on maintenance.
18. Is it in the best interests of the child to revise the orders as to access? The order of the trial court is clear, the orders of access would be adjusted on the guidance of the therapist. In the absence of a therapist's



report it would not be in the interests of the child to interfere with the Court order for as correctly observed by the trial court the child was negatively affected by the fall out between the parents. I do not have enough information to revisit the existing orders on access.

19. In the end therefore the appeal will fail.
20. In her judgment the trial court indicated that the parties were at liberty to apply, this means that the parties ideally should appear before the trial court under Sections 8, 53, 107 and 119 of the *Children Act*, 2022 if they wish to vary the orders on custody, access and maintenance of the Child.
21. Owing to the relationship between the parties there shall be no order as to costs
22. Parties at liberty to exercise their right of appeal within 30 days.

It is so ordered

DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 13TH FEBRUARY, 2026.

P M NYAUNDI

JUDGE

In the presence of:

Fardosa - Court Assistant.

Ms. Mphande for Sonoiya for Respondent.

