



**LWN v SSN (Civil Appeal E006 of 2023)  
[2026] KEHC 3251 (KLR) (Civ) (5 March 2026) (Judgment)**

Neutral citation: [2026] KEHC 3251 (KLR)

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

**CIVIL**

**CIVIL APPEAL E006 OF 2023**

**SN RIECHI, J**

**MARCH 5, 2026**

**BETWEEN**

**LWN ..... PLAINTIFF**

**AND**

**SSN ..... DEFENDANT**

**JUDGMENT**

1. This judgement in respect of Memorandum of Appeal dated 15<sup>th</sup> March,2024. The parties herein are biological parents to the minor subject in this matter. The Respondent filed a plaint dated 28<sup>th</sup> December,2020 in the Chief Magistrates Court seeking orders for maintainance and custody against the Appellant.
2. While the matter was pending in court on the 16<sup>th</sup> March, 2021, the parties recorded a consent in the following terms;
  - “ a. That the Plaintiff shall have the physical custody of the minor.
  - b. That both parties shall have joint legal custody.
  - c. That the Defendant shall have access to the minor every alternate weekend of the month from Saturday at 10.00 am to Sunday at 4.00 pm starting from 27<sup>th</sup> and 28<sup>th</sup> of March, 2021.
  - d. That the pickup and drop off point shall be Quick Matt Ruiru by the parties only.
  - e. That the orders of access shall be reviewed three months from today



- f. That the Ruiru Sub county children's office to file a Children Officer's Report on the progress of access on or before the 16<sup>th</sup> of June, 2021.
  - g. That the Defendant shall cater for the minors' tuition at Juja Preparatory school at the rate of Kshs.35,000 per term while the Plaintiff caters for the school related expenses including school transport.
  - h. Both parties shall cater for the minor's medical expenses equally.”
3. The parties on 16<sup>th</sup> August,2021, informed the trial court that they agreed on all the issues apart from the issue of access to the minor. The parties request court to determine the issue on access and the same was canvassed by way of written submissions. Both parties filed their respective submissions. Upon considering the submissions the trial magistrate delivered a Judgement on 20<sup>th</sup> December,2021 in which the trial magistrate made the following orders;
- A. That consent orders of 16<sup>th</sup> March,2021 shall remain in force
  - B. The parties shall share the custody of the minor during school holidays from the minor's seventh birthday
  - C. Parties shall be at liberty to travel with the minor out of the court's jurisdiction during school holidays subject to consultation and agreement with each other.
  - D. Parties are at liberty to apply.”
4. After the judgement was delivered the plaintiff later on secured a job in Rwanda and she proceeded to file an application dated 11<sup>th</sup> April, 2022 seeking review of the orders issued earlier by court. The trial court on 5<sup>th</sup> October,2022 reviewed the above orders as follows;
- “i. The Defendant shall access the minor whenever he travels to Rwanda either on a work trip or a visit of the minor as long as the minor is not in school. However, this must be done with prior arrangement with the Plaintiff.
  - ii. The Plaintiff shall avail the minor to the Defendant for access whenever he visits Rwanda with prior arrangements with the Plaintiff and as long as the minor is not in school.
  - iii. The Plaintiff shall avail the child for access by the Defendant for half of her holiday in Kenya.
  - iv. Each party shall cater for their own transport cost to and from Rwanda.....”
5. Being aggrieved by the above ruling delivered on 5<sup>th</sup> October,2022. The appellant filed memorandum of appeal before this court together with an application dated 19<sup>th</sup> August,2024. In the application the appellant sought an order that the respondent to furnish documentary evidence from her employer as relates to the duration of her contract in Rwanda. Upon considering the application this court delivered a ruling on 12<sup>th</sup> June 2024 in which it ordered that;
- I find that the respondent will suffer no prejudice if she adduces evidence in court on duration of her work contract/employment in Rwanda. This will assist the court in making determination on the issues raised in the appeal.”



6. Further, the appellant Stephen Sande Ngondi in his filed Memorandum of Appeal dated 15<sup>th</sup> March, 2024 set out eight(8) Grounds of Appeal as follows;
  1. The Learned Magistrate erred by issuing an Order for maintenance costs for food for the minor against the Appellant in the sum of KES 30,000/-
  2. The learned Magistrate erred by failure to take cognizance of the fact that the issue of maintenance was not among the issues for determination and as such neither party had an made any submissions before a decision on the same was rendered.
  3. The learned Magistrate rendered her decision through wrong analysis of the case on some of the issues for determination as relates to relevant facts, interpretation of facts and application of the law.
  4. The Learned Magistrate's decision as relates to access of the minor in Kenya is respectfully ambiguous in the opinion of the Appellant as far as guaranteed time periods of access are concerned.
  5. The Learned Magistrate misunderstood concerns raised by the Appellant on the issue of access and costs related to access that are intertwined.
  6. The Learned Magistrate misunderstood the benefit on the request of disclosure of the financial means of the Respondent as relates to access and costs related to access.
  7. The decision of the Learned Magistrate is in the circumstances unjust and unfair.
  8. Such other and or further grounds as may be canvassed, adduced, proved and or emerge at the hearing of this appeal.
7. The appellant prayed that this Honourable Court to set aside Orders (c), (d) & (e) of the Ruling delivered on October 5, 2021, virtually dispose of the Application viva voce, and determine the subject matter to its logical conclusion. The appellant also prayed that this court to issue new Orders on what time periods as relates to access the Appellant is guaranteed to enjoy with the minor in Kenya. Lastly, that this court to issue orders on which party will bear costs of access if the Appellant is granted access of the minor in Kenya.
8. By consent of parties the appeal was canvassed by way of written submissions. The appellant filed written submissions dated 19<sup>th</sup> November,2025 through the firm of Kazi Advocates LLP. The appellant submitted on whether the orders of access should be reviews as relates to sleep over access in either country. It was submitted the circumstances of judgement had factored in 4 days access each month through alternating weekends but this has changed due to the relocation. The appellant submitted that it would be unfair to apportion the cost of access upon either party in absence of interrogation of both parties' affidavits of financial means.
9. The appellant submitted on whether he should be subjected to monthly contribution of Kshs.30,000 for food of the minor. It was submission of the appellant that the lower Court's decision to decline the Affidavit of Financial Means of the Respondent has this as a consequence being the waste of time as a resource, the suffering caused due to lack of access, the Appellant having his salary attached to fulfil the decree. It was submitted unlike the Appellant no prejudice has been suffered by the Respondent. The minor's best interest to access his father has been deliberately curtailed by the Respondent and the Lower Court.



10. It was further submitted that the Appellant does not seek to abstain from responsibility to maintain the minor and he continues to meet the following obligations towards the minor (education cover, health insurance, clothing, entertainment, food, incurring an extremely high cost of access etc). It was submitted that the appellant cannot be burdened by both the whims of the respondent and by the apparent error and obvious bias of the trial court as elaborated before this court. The appellant submitted maintenance wasn't an issue for determination right away from the Lower Court. It was introduced by the Lower Court sui moto. Therefore, this needs to be struck out and the court to deal with access modalities and cost of access.
11. The respondent filed written submissions dated 6<sup>th</sup> January, 2026 through the firm of Mukoma & Associates Advocates. The respondent briefly submitted on whether this court should review the access orders. It was submitted that the trial court directed that the respondent shall have unlimited virtual access to the minor, and physical access during school holidays. It was further submitted that the trial court directed that each party shall bear the cost of access by the minor in their respective countries, however, the appellant demands that the respondent foot the bill for all transport.
12. The respondent submitted that It is clear that circumstances changed when the Respondent moved to Rwanda and it will be imprudent to assume that access would remain the same as if the minor was in the same jurisdiction. The respondent submitted that the court in its judgement did factor in the situation as is and made a sound judgement that was and still is in the best interest of the child.
13. The respondent submitted that both the Appellant and Respondent being the parents of the minor have obligations and responsibilities towards the child's development. It was further submitted a maintenance order of Kshs. 30,000 was made in the best interest of the child and the court exercised its discretion.
14. I have considered the Record of Appeal, the Appellant's written Submissions and the Respondent's written Submissions. The main issues for determination are;
  1. Whether this court should review access orders issued by the trial court?
  2. Whether this court should review and or set aside order of payment of child maintainance of Kshs.30,000/=
15. It is common ground that, this being a first appeal from the trial court, this court should reconsider all the evidence on record, evaluate it and draw its own conclusions, while bearing in mind that it did not have the benefit of seeing and hearing witnesses as they testified (Kenya Ports Authority –v- Kusthon (Kenya) Limited [2009] 2 EA 212)
16. On the first issue whether this court should review access order and costs of accessing the minor by the appellant. The court record disclose that the parties in this matter entered into a consent before the minor relocated to Rwanda . The parties consent that the Defendant shall have access to the minor every alternate weekend of the month from Saturday at 10.00 am to Sunday at 4.00 pm starting from 27<sup>th</sup> and 28<sup>th</sup> of March, 2021. That the pickup and drop off point shall be Quick Matt Ruiru by the parties only. That the orders of access shall be reviewed three months from today and lastly that the Ruiru Sub county children's office to file a Children Officer's Report on the progress of access on or before the 16<sup>th</sup> of June, 2021. While this consent orders were in place , the plaintiff secured a job in Rwanda and she proceeded to file an application dated 11<sup>th</sup> April, 2022 seeking review of the orders. The trial court on 5<sup>th</sup> October,2022 reviewed the above orders as follows;



- v. The Defendant shall access the minor whenever he travels to Rwanda either on a work trip or a visit of the minor as long as the minor is not in school. However, this must be done with prior arrangement with the Plaintiff.
  - vi. The Plaintiff shall avail the minor to the Defendant for access whenever he visits Rwanda with prior arrangements with the Plaintiff and as long as the minor is not in school.
  - vii. The Plaintiff shall avail the child for access by the Defendant for half of her holiday in Kenya.
  - viii. Each party shall cater for their own transport cost to and from Rwanda.....”
17. The appellant herein was aggrieved by the above orders he filed this instant appeal. It is clear from record that the minor currently resides in Rwanda. The minor is settled in Rwanda and shifting and or relocating him back to Kenya would disterbilize the minor.
18. Before I delve into the merit on issue of access of the minor, it is important to note that earlier the appellant had filed an application dated 19<sup>th</sup> August,2024 before this court seeking and this court to order the respondent to furnish documentary evidence from her employer as relates to the duration of her contract in Rwanda. Upon considering the application this court delivered a ruling on 12<sup>th</sup> June 2024 ordered that;

I find that the respondent will suffer no prejudice if she adduces evidence in court on duration of her work contract/employment in Rwanda. This will assist the court in making determination on the issues raised in the appeal.”

19. However, from the resore the respondent here dispite been ordered by this court to provide information or evidence in respect of her duration of employment in Rwanda the respondent failed to provide the information that would have been helpful to both parties and court in making determination on time of access of the minor and costs. This court will therefore be be guided by Article 53 of Constitution of Kenya on the principle of best interest of the child in making this determination on the issue of access of the minor.
20. From the trial court ruling the court ordered that the Plaintiff shall avail the child for access by the Defendant for half of her holiday in Kenya. The trial magistrate stated as follows in her ruling;

...I take Judicial Notice of the fact that employment opportunities are hard to come by in Kenya. So when a party gets a better opportunity in a foreign country and desires to move and settle with the child, she should be allowed so to do. I find that it is in the best interest of the minor that she is allowed to settle in her current position uninterrupted.

17. However, that does not take away the right of the Defendant as a father. Only that the circumstances of the case have now changed in so far as the Plaintiffs' residence has changed and thus the need to review the previous orders to fit the current circumstances. Fortunately, the Defendant also travels to Rwanda for work sometimes. So far within 3 months of the Plaintiff's relocation, theDefendant has been in Rwanda and has been able to access the child.
18. I therefore find the proposals that the Defendant accesses the minor when he visits Rwanda either for work or specifically to access the minor and to access the minor when the Plaintiff visits Kenya to be fair and reasonable. However, the access in Rwanda should be with prior notification to the Plaintiff and must be done when the child is not in school. The visits can be as regular as



possible as long as the child is not in school and the Plaintiff is available to avail the child.

19. When the Plaintiff visits Kenya, the Defendant can access the child for half of the days when the Plaintiff is in Kenya. However, the Parties must agree on the modalities because the court may not know the circumstances of the parties at the time of the visit especially considering the fact that the sleep over access shall commence at 7 years as per the judgment.
20. On the facilitation of the Defendant's travel expenses by the Plaintiff, the Plaintiff is already taking care of most of the minor's needs albeit she is assisted by her employer partly. It is therefore imperative and fair that the Defendant takes up his own travel expenses.
21. The appellant is aggrieved by the above orders and he is seeking this court to issue new orders on what time or periods as relates to access the appellant is guaranteed to spent with the minor in Kenya and that the court issue orders on which party will bear the cost of access if the appellant is granted access of the minor in Kenya.
22. To determine this issue I will be guided by Article 53 (1) (a) of *the Constitution* of Kenya 2010 provides, a child's best interests are of paramount importance in every matter concerning the child. This legal requirement to give paramourty to the best interest of the child in all actions concerning the child is repeated in Section 8 of the Children's Act, 2022 which provides that:
  - (2) 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....”
  - (3) All judicial and administrative institutions, and all persons acting in the name of these institutions, where they are exercising any powers conferred by this Act shall treat the interests of the child as the first and paramount consideration to the extent that this is consistent with adopting a course of action calculated to—
    - (a) safeguard and promote the rights and welfare of the child;
    - (b) conserve and promote the welfare of the child;
    - (c) secure for the child such guidance and correction as is necessary for the welfare of the child and in the public interest.
23. Guided by the above provisions of law. I find that the above orders were issued by the trial magistrate in the best interest of the child. The trial court issued the orders after taking into consideration all the relevant factors and therefore I find no reason to vary or set aside the orders on accessing the minor and the costs of travelling to Rwanda to visit the minor.
24. On the 2<sup>nd</sup> issue whether this court should review or set aside order of payment of Kshs.30,000/= per monthly by the appellant for child maintenance.
25. The appellant has submitted that the issue on maintenance was not among the issues the trial court was to determine at trial. It is appellant cntention that the court acted sui moto. The appellant submitted that the trial court failed to consider the respondent's affidavit of means before granting the orders.



26. Courts have issued guidelines on what to consider before issuing child maintenance orders, particularly where one of the parties claim that he or she is facing financial difficulties. The Court in *TMM v JMM* [2019] eKLR considered this issue and observed as follows;

I am satisfied that the Applicant is deserving of the exercise of the discretion of this Court in his favour. It is clear from the evidence adduced in this Court that the Children’s court failed to critically analyze the earnings of each of the parents in this case. In *HWN v GKC Children Appeal No. 3 of 2018*, [2018] eKLR Ndung’u J observed that orders of maintenance, like all other orders of court, should not be given in vain. Such orders must pass the test of practical enforcement. It behoves the court to call for and analyze with circumspection the earnings of the parents on the one hand and the needs of the children on the other. This is especially important in a case such as this one where there is an indication that the Applicant has another family.”

27. The Court in *EAW v WAN* [2021] eKLR interrogated this question and pronounced itself as follows;

The Children Court has the jurisdiction to periodically review and adjust the maintenance and education orders which it has issued where the circumstances of the child and the parents change (*J.K.W. v A.W.M.* [2018] eKLR). In order to review upwards or downwards, as the circumstances may demand, the court has to fully hear the parties and examine whatever evidence of means that will be availed. It is only then that the court can reach a decision as to the appropriate maintenance and education amount. Such decision is reviewable, or appealable, as the case may be.”

28. The above authorities underscore that a Court can review maintainance orders where it has been proved that the circumstances of the child and the parent have changed. In this instant case the respondent secured a Job in Rwanda and relocated with the minor. This lead to changed in circumstantance.

29. The trial court stated as follows in respect of maintainance;

21. Considering that school fees and school related expenses and part of the medical expenses have been taken away from the Defendant, I opine that it is only fair that the Defendant chips in the maintenance of the other needs of the minor. From the Plaintiff’s evidence before court, the contract is only for 2 years. To mean in case the contract ends and the Plaintiff relocates back to Kenya, then the parties must revert to their original position as per the judgement. However,for now, I agree that reloocation of the Defendant’s obligations in the judgement is imperative in the interest of fairness and best interest of the minor....

22. I therefore find it reasonable that the Defendant chips in to the expenses of the minor in terms of food until when the Plaintiff’s contract is terminated and she returns to Kenya. At that point, the parties will revert to their original responsibilities.”

30. It is trite law that parental responsibility is an equal joint responsibility of the parents to a child and no parent shall be treated specially as having a superior right over the child than the other. In *PKM V ANM* (2020) eKLR. where Aroni J stated that;“In my view therefore, one need not go further to look at what parents need to do for a child and to what extent. In this instance the parties have joint responsibility towards their son and no one is superior to the other...”

31. In view of the above, there is no doubt that parental responsibility is a joint and equal responsibility. Both parties herein are equally have an equal task to support the minor.



32. The Court in exercise of its power may impose conditions, vary, modify or even discharge a maintenance order for the making of a financial provision. The Court may also increase or decrease or change the times of payments of the amount payable under a maintenance order. Additionally, the Court has the power and discretion to temporarily suspend the whole or any part of the maintenance amount and subsequently revive it wholly or in part as it deems fit. For a party to be deserving of an order of variation of a maintenance order, it must be demonstrated that such variation is in the best interests of the child.
33. The appellant is seeking this court to review payment of Kshs.30,000/= as maintenance for the minor. In children matters, unlike ordinary suits, a Children's Court has jurisdiction to review or vary orders paying regard to the best interest of the child which is of paramount consideration. The jurisdiction is granted by Section 120 of the Children's Act.
34. Maintenance is a shared obligation and the courts must balance the financial capacity of both parents against the child's needs. However, whether variation may be downward or upward depends on evidence of changed circumstances. In the present case, the changed circumstances are that the minor relocated to Rwanda and that the minor school fees and related expenses and medical expenses are catered for by the respondent's employer. This court taking into consideration the changed circumstances it is in the best interest of the child that the Appellant should cater for part of maintenance costs of the minor.
35. Accordingly, the appeal succeeds to the extent that I set aside the order that the defendant shall cater for minor's food at the rate of Kshs.30,000 per month payable to the Plaintiff's not later than the 5<sup>th</sup> of every month and substitute the same with an order that defendant shall cater for minor's food at the rate of Kshs.15,000 payable to the Plaintiff when the minor is in Kenya. The review on orders of access time in Rwanda and costs in hereby declined and the parties to maintain the arrangement set out by the trial court on accessing the minor and cost of travelling and transport to visit the minor in Rwanda  
Orders accordingly.

**DATED AT NAIROBI THIS ...5<sup>TH</sup> ... DAY OF MARCH, 2026**

.....

**S. N. RIECHI**

**JUDGE**

