JCG v MCK (Civil Appeal E194 of 2024)
[2026] KEHC 2812 (KLR) (27 February 2026) (Judgment)

Neutral citation: [2026] KEHC 2812 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAKURU

CIVIL APPEAL E194 OF 2024

SM MOHOCHI, J

FEBRUARY 27, 2026

BETWEEN

JCG ..... APPELLANT

AND

MCK ..... RESPONDENT

JUDGMENT

1. I have considered the grounds of appeal and submissions by the Appellant and the Respondent. I have also considered the material and evidence presented in the Record of Appeal.

2. The Court has a duty as a first Appellate Court to re-evaluate, re- analyze and re- consider afresh the evidence tendered before the trial court without losing sight of the fact that the it did not have the advantage of hearing the witnesses or assessing their demeanor.

3. The Court of Appeal in the case of Gitobu Imanyara & 2 Others v Attorney General [2016] eKLR stated: -

> " This being a first appeal, it is trite law, 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."

4. This is a matter concerning children, this Court must therefore be guided by the principle of best interest of a child as provided under Article 53(2) of *the Constitution* which provides: -

> " A child's best interests is of paramount importance in every matter concerning the child."

5. Further Court is guided by Section 8 (1) of the Children's Act which provides: -

> " In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies-
>
> a. the best interests of the child shall be the primary consideration;
>
> b. the best interests of the child shall include, but shall not be limited to the considerations set out in the First Schedule."

6. The continued bickering, disagreements and fighting between the Appellant and Respondent shall have a lifelong imprint in the memory of the children.

7. Both the Appellant and the Respondent took the view that they were both of limited economic means, the Respondent had taken the view that the Appellant was well off generating daily income while on her part her income was erratic performing casual jobs with a prior employment history where she was paid Ksh 8,000/- per month.

8. The Respondent had been put to strict proof before the trial court, that the Appellant was of means to meet her estimated costs but she failed and thus this court would concur with the Appellant that his evidence of means thus remained unimpeached.

9. The court further notes of a prior consent by the Appellant before the children officer where he agreed to send the Respondent daily amounts of Kshs 200/- to 300/- for food for the children. This court views the amount as modest and realistic for the basic survival of the children and that the same did inform the decision of the trial magistrate. I find no fault in the trial court decision that the Appellant expends kshs 6000/- for food towards his two children. In any case as the children grow up, the needs shall increase and it would not be in the province of the court to adjudicate upon the escalated costs of upbringing or apportionment thereof in the lives of the children.

10. Both parties have been represented by counsel with all manner of gymnastics in litigation being unleashed. None of the parties moved the court as a pauper and I am afraid it would appear that while both parties disclosed their respective means they both did understate their actual means and were both economical with the truth. The court ought to have inquired on this issue in a much deeper sense and in the children's best interest.

11. I am afraid of the extend of weaponization in litigation by both parties before the trial court and on Appeal, their personal differences and emotional trauma is palpable and has clouded their objectivity and converted the children maintenance cause into a theater of retribution while using their two minor children as the pawns. The children here never applied or selected to be born by the Appellant or the Respondent and not withstanding their current situation the least their parents should ensure is to minimize the impact and damage they the parents differences shall have on the lives of the children and not aggravate the same.

12. There was consent by the parties on most aspects (various heads) of the upkeep of the children save for the head of food. Both parties took the view that they both lacked the means to feed their children having brought them forth to this earth I do find this to be disingenuous of both parents and totally unacceptable.

13. While courts have majorly determined children maintenance disputes scientifically deducing reasonable contributions based on income of the parties, the guiding principle remains the best

interests of the child and I would hasten to add that no parent can plead inability to feed their children this is unacceptable and would constitute a crime.

14. While parental responsibility is equal in principle, in real life the same is not viewed in mathematical precision and parties do not keep account on actual amounts of moneys or other resources expended on children upkeep the Appellant has complained of being condemned to a lion share of child maintenance costs while he is a man of straw, he otherwise argues if granted custody he would be able to feed the children.

15. Strangely the Respondent does not object to the Appellant having custody and the Appellant does not object to the actual custody order granted by the court to the Respondent. I find the paradox to be hiding in the detail, in simple language it demonstrates the Appellant to be capable of feeding his children while laying bare how the children are being used as pawns in the personal differences of their adult parents.

16. For the Reasons elaborated above and, in the children's, best interests, I find the Appeal to be of no merit and accordingly dismiss the same.

17. While being privy to the depth of weaponized litigation this has been, I decline to grant any costs for this Appeal and parties shall bear their own costs.

It is so ordered.

DATED SIGNED AND DELIVERED AT NAKURU ON THIS 27TH DAY OF FEBRUARY 2026

MOHOCHI S.M.

JUDGE