



**CK v ER (Civil Appeal E075 of 2024)
[2026] KEHC 3591 (KLR) (Family) (19 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 3591 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
CIVIL APPEAL E075 OF 2024
HK CHEMITEI, J
MARCH 19, 2026**

BETWEEN

CK APPLICANT

AND

ER RESPONDENT

RULING

1. This ruling relates to the application dated 20th November, 2025 filed by the Applicant , CK seeking for orders that:-
 1. Spent.
 2. Pending the hearing and determination of this appeal, the Respondent be compelled to immediately reinstate the Appellant and the three minor children into the matrimonial home, from which they were unlawfully and violently evicted by the Respondent in December, 2024.
 3. The Respondent be ordered to reimburse the Appellant all school fees and school related expenses already incurred, contrary to the lower court’s judgment, together with all future school fees as ordered by the trial court.
 4. This honourable court do issue any further orders necessary to secure the welfare, safety and best interests of the minor children.
 5. The costs of this application be provided for.
2. The application is based on the grounds on its face and supported by affidavit sworn by CK on 20th November, 2025.



3. She avers inter alia that she is the biological mother and primary caregiver of three young children. She argues that even though there is an existing judgment in Children's Case No. E1384 of 2022 mandating the Respondent to provide shelter and cover the children's school fees and related costs, the Respondent violently assaulted her in December 2024 and unlawfully evicted her and the kids from their home without any court order. Consequently, she had to move with the children to Isinya, Kajiado County, to find a safe place to live and ensure they could continue their education.
4. She further claims that the Respondent has not complied with the court's orders regarding school fees and other educational expenses, leaving her to shoulder the burden of the children's education, medical needs, transport and daily living costs all on her own. She insists that the Respondent's claims about paying the children's school fees or that the school transfer was done unilaterally are misleading. She explains that the transfer was necessary due to the eviction, which made it impossible for the children to continue attending their previous school due to distance.
5. Therefore, she is seeking orders that would require the Respondent to adhere to the lower court's judgment, reimburse her for the school fees and related expenses she has already paid and refund additional costs she has incurred for the children's well-being. To back up her claims, she has annexed various documents such as police reports, referral forms from the children's office, photos of the eviction, school fee invoices and confirmations, bank deposit slips, medical receipts and other payment records that illustrate the expenses she has faced in caring for the minors after the eviction.
6. The application is opposed vide replying affidavit sworn by EKR on 21st January, 2026.
7. He avers inter alia that he is the biological father of the minors. He argues that the application is nothing but frivolous, vexatious and an abuse of the court's process. He states that he has followed the Children's Court judgment that requires him to cover school fees and related expenses and he has attached receipts and school confirmations to prove that he has indeed made payments for the minors' education.
8. He firmly denies any allegations of assault or unlawfully evicting the Applicant and the children from their home, claiming instead that the Applicant left voluntarily to stay with her mother. He also mentions that he has consistently tried to keep in touch and maintain access to the children, but the Applicant has made this difficult by cutting off communication and moving the minors to a different school without consulting him.
9. Additionally, he challenges the Applicant's request for reimbursement of school fees and other expenses, arguing that many of the receipts provided do not actually prove spending on the minors but are simply bank withdrawals or unrelated purchases. He insists that he is more than willing and capable of fulfilling his parental duties and supporting the children's education and well-being. He believes that the Applicant's actions have unfairly restricted his access to the minors, which goes against the existing court orders.
10. Therefore, he is asking the court to dismiss the application with costs, asserting that the requests made are baseless and aimed at undermining his role as a parent.
11. The Applicant has filed written submissions dated 19th January, 2026 and the Respondent has filed written submissions dated 21st January, 2026.

Analysis And Determination

12. I have carefully considered the application, the response thereto and the rival submissions; and address them as follows.



13. In CS v NK [2024] KEHC 12896 (KLR), the court pronounced itself as follows: “ ...22. It is trite law that in all matters touching on the child and in all decisions touching on the child, the best interest of the child is to be given paramountcy. Therefore, in determining this appeal this court is alive to the fact that it is under an obligation as provided under Article 53(2) of *the Constitution* of Kenya 2010 and Section 4(3) of the *Children Act* to give primacy, while considering any disputed matters involving children, to the best interest of child. The law provides factors to consider when determining a child’s best interests. In determining what constitutes the best interest of the child, each case is considered on its own peculiar circumstances. Further it is a settled legal principle that in determining matters of custody of children, especially of tender age, except where exceptional circumstances exist, the custody of such children should be awarded to the mother (see J.O v. S.A.O [2016] eKLR). This is what is referred to the Tender years doctrine. 23. The best interest principle was well articulated by Hon Ngugi J. (as he then was) SMM v ANK [2022] eKLR the court observed as follows; However, it is apparent that while the Tender Years Doctrine, is persuasive in considering custody of children, it can no longer be considered as an inflexible rule of law. This is not to say that the substance of the rule has dissipated completely; it is to say that its inflexibility has been eroded by the evolving standards of decency reflected in Article 53 of *the Constitution*. Differently put, the Tender Years Doctrine must now be explicitly subjected to the Best Interests of the Child Principle in determining custody cases. Differently put, the welfare of the children is the primary factor of consideration when deciding custody cases. The judicial rule that a child of tender years belongs with the mother is merely an application of the principle in appropriate cases. The modern rule begins with the principle that the mother and father of a child both have an equal right towards the custody of the child. 24. One is not the alternative to the other, rather the two principles should be considered together to ensure that a court arrives at a decision that safeguards the best interests of the child...”
14. Having cited the above authorities and noting that the appeal substantively is yet to be heard, my perspective is that the parties ought to stick to the trials court judgement to the latter.
15. It is clear that the parties were each granted responsibilities and duties and to the extent that the same is yet to be determined they must comply. It is the duty of the Respondent to provide shelter and the school fees among others
16. I note that the major complain by the Respondent is that he has not been provided access to the children despite the trial court having clearly explained itself on the manner of access via its judgement of 24th May 2024.
17. To this extent and even though the Applicant is asking the Respondent to provide shelter she must as well allow access of the children to the Respondent. She cannot simply ask for provision of shelter and at the same time fail to provide access as directed and on various period.
18. In other words, both parties must make it easier to comply with the trial court’s judgement as they await the determination of the appeal.
19. The Respondent must provide shelter, if it is true that he evicted the Applicant and the children from the matrimonial home. It is also not lost to me that there is a pending matrimonial property case.
20. To strike a balance therefore I direct that:
 - (a) The Respondent shall provide shelter to the Applicant and the children as directed by the trial court on condition that the Applicant does provide unhindered access of the children to the Respondent unconditionally pending the outcome of this appeal.
 - (b) This appeal be processed for hearing within the next 60 days from the date herein.



(c) Costs shall be in the cause.

DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAIROBI THIS 19TH DAY OF MARCH 2026.

H K CHEMITEI

JUDGE

