

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
JUDICIAL REVIEW DIVISION
JUDICIAL REVIEW APPLICATION NO. E266 OF 2025

BETWEEN

**YASSIN MOHAMMED HUSSEINEX PARTE
APPLICANT**

VERSUS

**THE CHIEF MAGISTRATE'S COURT AT NAIROBI
(CHILDREN'S
COURT)RESPONDENT**

AND

SABIYA BAGHAINTERESTED PARTY

RULING

1. The Application that is before this court is the one dated 15th August 2025 wherein the Applicant seeks the following orders:
 - 1) ...spent.
 - 2) That the Applicant, Yassin Mohammed Hussein, be granted leave to apply for an Order of Certiorari to remove into this Honourable Court and quash the decision of the learned magistrate sitting at the Children's Court at Nairobi made on or about 11th July 2025, issuing a warrant of arrest against the Applicant in Children's Case No. 615 of 2016.
 - 3) That the grant of leave herein do operate as a stay of any further proceedings, actions, or execution whatsoever in relation to the

impugned orders and warrant of arrest in Children's Case No. 615 of 2016 pending the hearing and determination of the substantive judicial review Application.

4) THAT the costs of this Application be provided for.

The Applicant's Case;

2. He argues that he has all along complied with all the orders of the Children's Court, including the payment of school fees for Premier Academy and the monthly maintenance of Kshs. 30,000.
3. He is concerned that the warrant of arrest issued against him was sought to compel him to pay Kshs. 103,946.92, a figure unilaterally calculated and dishonestly classified by the Interested Party as "school related expenses" which according to him was not a court-directed expense or a sum determined by any court order.
4. He argues that the issue of the scope of the parties' respective responsibilities pending interpretation before the Children Court.
5. Despite the existence of this legitimate dispute according to him the Interested Party chose to bypass a civil resolution and instead initiated punitive contempt proceedings against him, which culminated in the improper warrant of arrest.
6. He argues that the law provides for a specialized Children's Court for a critical reason. It's purpose is to ensure that matters involving a child's welfare are handled with the utmost sensitivity, care, and a protective, non-adversarial approach. The specialization is not merely

a label; it dictates a fundamentally different approach to justice—one that prioritizes de-escalation of parental conflict for the sake of the child.

7. It is his case that the process that he was subjected to was the complete antithesis of this principle.
8. He argues that the hearing that culminated in the issuance of a warrant of his arrest was conducted by a temporary' duty magistrate whose primary caseload involves general civil and land matters.
9. The process was summary, intimidating, and lacked any of the nuance required by the Children Act.
10. He is troubled that the case was treated not as a sensitive family matter, but as a common debt collection, with the threat of arrest used as the primary tool of enforcement defeating the purpose of a specialized court and the safeguards the law provides for families and children.
11. He argues that he was forced to pay the Kshs. 103,946.92 under extreme duress and protest and in breach of the fundamental principles of fair procedure were breached thereby calling for the direct exercise of this Honourable Court's supervisory jurisdiction over subordinate courts to correct such injustices, to protect the integrity of our judicial system, and to ensure that specialized courts function as the law intends.
12. The Interested Party who is the biological mother of the minor herein opposes the Application.

- 13.** She argues that she shares parental responsibility over the said minor pursuant to the orders issued by the Children's Court at Nairobi in Children's Case No 615 of 2016 on 6th July 2017, and further clarified by the orders issued on 25th November 2021.
- 14.** The Applicant complies with the court order at his will and only when it suits him prejudicing the minor's best interest.
- 15.** It is her case that on or about 24th April 2024, the Children's court at Nairobi had to issue a Notice for the Applicant to Show Cause why he should not be arrested and committed to civil jail for failing to comply with the court orders herein. As a result, the Applicant was ordered to make payment of the arrears due which he complied with.
- 16.** She argues that he persisted with his willful disobedience of the court orders herein and on or about 28th May 2025, she filed an Application in the Children's court at Nairobi to enforce the court orders herein.
- 17.** She then filed an Application for execution of the Court orders in Children's Case No 615 of 2016 and for reimbursement of the sum of Kshs. 103,946.92 which she had incurred owing to the Applicant's refusal to meet the Minor's school related expenses.
- 18.** When the matter came up in court for directions on 30th June 2025, the Applicant did not attend court through his appointed advocates who were well aware of the court date aforesaid.
- 19.** The court therefore issued a warrants of arrest against the Applicant for contempt of the court's orders.

20. She argues that the children's court at Nairobi acted within its mandate by ordering that warrants of arrest to issue against the Applicant for his failure to comply with the court orders.
21. She argues that allowing a stay of execution of the court orders issued by the children's court at Nairobi would not only be against the interest of justice but contrary to the best interests of the Minor as issuance of the said orders will permit the Applicant to continue abdicating his parental obligations unabated.
22. She further argues that judicial review proceedings should not be lodged where there is an alternative remedy and, in this case, the Applicant has right of appeal to the High Court against the orders he is seeking this Court's remedy on.

Analysis and Determination;

The issue for determination is whether or not the Applicant has made out a case for the grant of the orders sought.

23. The applicable law on leave to commence judicial review proceedings is Order 53 Rule 1 of the Civil Procedure Rules, which provides that no Application for judicial review orders should be made unless leave of the court was sought and granted.
24. The reason for the leave was explained by Waki J (as he then was), in **Republic v County Council of Kwale & Another Ex Parte Kondo & 57 Others, Mombasa HCMCA No. 384 of 1996** as follows:

“The purpose of Application for leave to apply for judicial review is firstly to eliminate at an early stage any Applications for judicial review which are either frivolous, vexatious or hopeless and secondly to ensure that the Applicant is only allowed to proceed to substantive hearing if the Court is satisfied that there is a case fit for further consideration. The requirement that leave must be obtained before making an Application for judicial review is designed to prevent the time of the court being wasted by busy bodies with misguided or trivial complaints or administrative error, and to remove the uncertainty in which public officers and authorities might be left as to whether they could safely proceed with administrative action while proceedings for judicial review of it were actually pending even though misconceived...Leave may only be granted therefore if on the material available the court is of the view, without going into the matter in depth, that there is an arguable case for granting the relief claimed by the Applicant the test being whether there is a case fit for further investigation at a full inter partes hearing of the substantive Application for judicial review. It is an exercise of the court’s discretion but as always it has to be exercised judicially”.

- 25.** To Issue an Order of Certiorari to remove into this Honourable Court and quash the decision of the learned magistrate sitting at the Children's Court at Nairobi made on or about 11th July 2016, issuing a warrant of arrest against the Applicant in Children's Case No. 615 of 2016 will amount to an usurpation of the statutory jurisdiction of the Children.

- 26.** The only time that this court can interfere with the Children’s court is where an Applicant proves that the children court acted illegally, irregularly or in a way that is unreasonable or with procedural impropriety.
- 27.** The principles are enunciated in in the case of **Francis Bahikirwe Muntu and others v Kyambogo University, High Court, Kampala, Miscellaneous Application Number 643 of 2005 (UR)**.

“Illegality is when the decision-making authority commits an error of law in the process of taking the decision or making the act, the subject of the complaint. Acting without Jurisdiction or ultra vires, or contrary to the provisions of a law or its principles are instances of illegality....

Irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards: Re An Application by Bukoba Gymkhana Club [1963] EA 478 at page 479 paragraph “E”.

Procedural impropriety is when there is failure to act fairly on the part of the decision-making authority in the process of taking a decision. The unfairness may be in non-observance of the Rules

of Natural Justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative Instrument by which such authority exercises jurisdiction to make a decision. (Al-Mehdawi v Secretary of State for the Home Department [1990] AC 876)."

- 28.** Without getting into the merits of the case, this court from a cursory glean at the record and without delving deeply into the arguments of the parties, from the evidence before court I am able to make a decision as to whether an Applicant's case is sufficiently meritorious to justify leave. It does not.
- 29.** In **Uwe Meixner & another v Attorney General [2005] eKLR**, it was held that the leave of court is a prerequisite to making a substantive Application for Judicial Review with a view to filtering out frivolous Applications and the grant or refusal involves an exercise of judicial discretion and the test to be applied is whether the Applicant has an arguable case. Thus, the first step in the Judicial Review procedure involves the mandatory "leave stage." At this stage an Application for leave to bring Judicial Review proceedings must first be made. The leave stage as held by Waki J is used to identify and filter out, at an early stage, claims which may be trivial or without merit.
- 30.** In **Republic v National Transport & Safety Authority & 10 others [2014] eKLR, in Kihingo Village (Waridi Gardens) Management Limited v Attorney General & 2 others**

(Judicial Review 169 of 2023) [2023] KEHC 26714 (KLR) (Judicial Review) (20 December 2023) (Ruling) in granting leave to the Applicant to file judicial review it was held that;

“I have carefully perused through the record and submissions a prima facie case is established to warrant the grant of the leave sought.”

31. Under Section 121 of the Children Act, the Children Court may issue a warrant committing the Respondent to imprisonment for a term not exceeding thirty days if the Court is satisfied on evidence that—

(a) the Respondent has persistently and willfully refused or neglected to make payment of all or any part of the monies ordered to be paid under a maintenance or contribution order without reasonable cause;

(b) the Respondent is present at the hearing;

(c) an order for attachment of the Respondent’s income would not be appropriate; or

(d) it has enquired into the cause of the default and is satisfied that such default was due to the Respondent’s willful refusal or neglect.

(8)The Court shall have power to vary, modify or discharge any order made under this section.

32. The court is of the view that from a prima facie level it is clear that the Children Court has acted within the Children act.

Costs;

- 33.** In determining the issue of costs, this court is guided by the Supreme Court in the case of **Jasbir Singh Rai & Others vs. Tarlochan Rai & Others** observed that;

“In the classic common law style, the courts have to proceed on a case by case basis, to identify "good reasons" for such departure. An examination of evolving practices on this question shows that, as an example, matters in the domain of public interest litigation tend to be exempted from award of costs...”

- 34.** This is a children matter and the court will depart from the settled principle that costs follow the event.

Disposition;

- 35.** The Applicant has not made out a prima case that justifies the grant of the orders sought.

Order;

The Application is dismissed with no orders as to costs.

Dated, signed and delivered at Nairobi this 24th day of March 2026.

.....

**J. CHIGITI (SC)
JUDGE**