

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MILIMANI
FAMILY DIVISION
APPEAL NO. E087 OF 2024

SIMON MURIITHI GATEBI **APPELLANT**

VERSUS

EMILY KHAYASI ALIGULA **RESPONDENT**

*Being an Appeal from the Judgement of Hon. Jackie Kibosia, Principal Magistrate,
delivered on 26 July 2024 at Nairobi Children's Court Case No. MCC/797/2019)*

JUDGEMENT

1. The adjudication of family disputes, particularly those concerning the maintenance and educational welfare of children, requires a delicate equilibrium between the rigid dictates of statutory law and the fluid, often turbulent realities of human relationships. At the heart of this appeal lies a profound philosophical and legal conundrum: the metamorphosis of parental responsibility as a child crosses the threshold of adulthood but remains economically dependent in the pursuit of tertiary education. Our jurisprudence has long recognized that bringing a child into the world establishes an indelible covenant of care, an obligation that is not necessarily severed by the dissolution of marriage, the estrangement of the parents, or the mere attainment of the age of majority. However, the enforcement of this covenant must be anchored in equity, proportionality, and the undeniable financial realities of the parties involved.

2. This appeal invites the Court to navigate the complex intersection of constitutional imperatives and practical financial constraints. It raises critical questions regarding the unilateral escalation of educational costs by one parent, the evidentiary consequences of failing to disclose financial means in family litigation, the vagueness of open-ended maintenance decrees, and the duty of adult children to mitigate parental burdens through available statutory funding mechanisms. The scales of justice must balance the paramount best interests of the child, as enshrined in Article 53 of The Constitution, against the constitutional protection of parents from punitive, oppressive, or disproportionate financial decrees. It is not the function of the legal system to weaponize child maintenance as an instrument of retribution for a failed marriage, nor is it the function of the courts to sanction the financial abdication of a parent of means. Maintenance must be a shared, equitable, and rational undertaking.
3. The genesis of this dispute traces back to a union solemnized on 1 May, 2004, between the Appellant and the Respondent. The marriage was blessed with one issue, S.N.M. born on 15 July, 2005.
4. The marital relationship deteriorated, culminating in the Appellant's departure from the matrimonial home on 20 November, 2018. At the time of this separation, the subject child was undertaking her Kenya Certificate of Primary Education (KCPE) examinations. Following her successful performance, she secured admission to Kenya High School. The Respondent initiated proceedings at the Milimani Children's Court (Children's Case No. 797 of 2019) alleging that the Appellant had abdicated his parental responsibilities, leaving her to singularly bear the financial burden of the child's education, shelter, and upkeep.

5. The litigation in the trial court was protracted and acrimonious, characterized by multiple interlocutory applications, warrants of arrest, and temporary maintenance orders. The subject child eventually transitioned from secondary to tertiary education. The record indicates that she initially enrolled at the Jomo Kenyatta University of Agriculture and Technology (JKUAT) to pursue a Bachelor of Science in Nursing, and subsequently transferred to Kabarak University to pursue a Bachelor of Science in Clinical Medicine.
6. The dispute culminated in a final judgment delivered on 26 July, 2024. In an attempt to apportion parental responsibility, the learned trial Magistrate issued the following directives: First, to the Respondent (Mother), the Court assigned the responsibility for food, shelter, clothing, and utilities. Second, to the Appellant (Father), the Court assigned the responsibility for college fees and related expenses until completion, and the provision of a comprehensive medical cover.
7. Aggrieved by this apportionment, the Appellant lodged the instant appeal seeking to set aside or substantially vary the orders of the lower court.

The Appellant's Case

8. The Appellant's dissatisfaction with the trial court's judgment is articulated through several interrelated grounds of appeal, which contend that the impugned orders are vague, lopsided, oppressive, and fundamentally violative of the principle of equal parental responsibility.
9. The Appellant argues that the trial court's apportionment does not equate to a shared and equal contribution. By imposing the entirety of college fees, undefined related expenses, and a comprehensive medical cover upon him, the trial court condemned him to an annual financial burden exceeding Kshs 453,000/=. He contrasts this with the Respondent's obligations (food, shelter,

utilities) which, during the pendency of the suit, amounted to a mere Kshs 17,500/= per month, translating to Kshs 210,000/= annually.

10. Furthermore, the Appellant submits that the child was initially enrolled at JKUAT, a public institution where the fee structure was relatively predictable, amounting to Kshs 108,064/= for the first trimester and Kshs 104,323/= for subsequent trimesters. However, the Respondent unilaterally, and without consultation, transferred the child to Kabarak University, a private institution where fees and associated costs escalated to approximately Kshs 150,000/= per trimester. The Appellant contends it is inequitable in law to hold him liable for a unilaterally inflated financial burden.
11. The Appellant also asserts that the child, now an adult, deliberately declined to apply for funding from the Higher Education Loans Board (HELB), electing instead to rely entirely on parental financing. He argues that a party cannot refuse a viable, state-sponsored funding mechanism and subsequently seek to impose the entirety of the burden on another party.
12. Additionally, the Appellant challenges the directives regarding related expenses and comprehensive medical cover as legally ambiguous. He argues that 'related expenses' is an undefined parameter that creates an avenue for continuous harassment and extortionate demands. Furthermore, he notes that universities offer basic medical schemes charging approximately Kshs 3,500/= per trimester, and the National Hospital Insurance Fund (NHIF) is available, rendering the demand for a private comprehensive cover unjustifiable and opulent.
13. Finally, the Appellant strongly contests the trial court's failure to compel the Respondent to file an Affidavit of Means. He asserts that the Respondent is a graduate Nurse employed as a Hospital Matron, earning an estimated Kshs

150,000/= per month, yet she shielded her income from judicial scrutiny to project an image of financial vulnerability.

The Respondent's Case

14. The Respondent vigorously opposes the appeal, maintaining that the trial court's judgment was an evidence-based exercise of discretion tailored to the best interests of the child, consistent with Article 53(2) of the Constitution and section 8 of the Children Act.
15. The Respondent emphasizes that the Appellant deserted the family in 2018 during a critical juncture in the child's life while she was undertaking her KCPE examinations, and subsequently failed to voluntarily honour his parental obligations, necessitating continuous court interventions and warrants of arrest. She argues that the appeal is an afterthought designed to evade lawful responsibilities.
16. The Respondent refutes the Appellant's claims of financial hardship. She asserts that the Appellant is a man of substantial means, earning an estimated Kshs 400,000/= to Kshs 738,000/= monthly from a combination of salary, business enterprises, and rental income from co-owned properties.
17. Relying on established jurisprudence such as ***G. O. & 2 others v M. O. O KEHC 2325 (KLR)***, the Respondent argues that equal parental responsibility under Article 53(1)(e) of the Constitution does not mandate a 50/50 mathematical split. Instead, responsibility must be apportioned equitably based on the respective means and earning capacities of the parents. Given the Appellant's alleged superior financial standing, she contends that the burden of school fees and medical cover is a fair reflection of his capacity.
18. The Respondent defends the terminology used by the trial court, arguing that 'related expenses' in the context of university education logically

encompasses boarding, transport, and necessary academic materials, and is, therefore, not vague. She further asserts that maintenance orders are not punitive, but rather a basic enforcement of constitutional duty.

Analysis & Determination

19. This Court sits as a first appellate court. It is a well-entrenched principle of that a first appellate court has the jurisdiction and the duty to subject the entire evidence and the judgment of the trial court to a fresh and exhaustive examination. The purpose of this exercise is to allow the appellate court to reach its own independent conclusions. The Court is mindful of the guidance provided by the Court of Appeal in the case of ***Selle v Associated Motor Boat Co. Ltd EA 123***, where it was held that an appeal to the High Court is by way of retrial, and the Court must reconsider the evidence, evaluate it, and draw its own conclusions, subject to the caveat that it neither saw nor heard the witnesses testify. This principle was further enunciated in ***Abok James Odera t/a A. J. Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates eKLR***, emphasizing the appellate court's duty to re-evaluate the extracts on the record and determine whether the trial court's conclusions ought to stand.
20. In exercising this jurisdiction, the Court must meticulously analyse the documentary evidence, particularly the financial records which form the bedrock of maintenance disputes. Where the trial court has failed to properly appreciate the weight of the evidence, or where it has misapprehended the law, this Court is legally bound to intervene and substitute the findings with an equitable determination.
21. A central pillar of this appellate review involves scrutinizing the financial capacities of the parties, particularly in light of the Appellant's claim that the Respondent concealed her income, and the Respondent's claim that the Appellant is obscuring his wealth. In family litigation, particularly proceedings

concerning child maintenance, the proceedings are inherently inquisitorial. The Court must ascertain the truth regarding the financial standing of the parents to make a just apportionment. The primary vehicle for this disclosure is the Affidavit of Means, supported by documentary evidence such as pay slips, bank statements, and tax returns.

22. The Appellant has continuously projected a narrative of financial constraint, arguing before the trial court and this appellate forum that he lacks a predictable source of income or formal employment. However, a forensic review of the documentary evidence on record, specifically the M-Pesa transaction statements spanning 2016 to 2018, reveals a vastly different financial reality.
23. The M-Pesa records demonstrate that the Appellant handles substantial liquidity, engaging in high-frequency, high-value transactions that are characteristic of robust business operations or significant rental income collections. The data extracted from the record unequivocally contradicts the Appellant's protestations of indigence. Within the month of June 2018 alone, the Appellant made cash deposits well in excess of Kshs 490,000/=. The continuous flow of funds, coupled with equally large outward transfers to various individuals and hardware businesses, indicates that the Appellant possesses substantial financial capacity and operates active commercial ventures. While these records date back to 2018, the Appellant has failed to produce contemporary, verified financial statements, such as audited accounts or Kenya Revenue Authority tax returns, to prove a drastic reduction in this capacity. It is a trite principle of evidence that he who asserts an inability to pay must prove it. The Appellant has failed to discharge this burden, and the Court finds that he is a man of substantial means.
24. Conversely, the Court must address the Respondent's financial posture. It is a matter of record, uncontested by the Respondent, that she failed to file an

Affidavit of Means in the trial court. The Appellant alleges that she is a graduate Nurse serving as a Hospital Matron, earning approximately Kshs 150,000/= per month.

25. A court cannot make a fair and equitable apportionment of parental responsibility in a vacuum. In the highly persuasive and applicable case of ***P K M v R P M [2016] KECA 777 (KLR)***, which neither party cited, the Court of Appeal lamented the failure of spouses to file Affidavits setting out full particulars of their property and income. The Court observed that such proceedings demand a strict duty of candour. Where a party deliberately fails to furnish the Court with information regarding their means and assets, the Court is perfectly entitled to draw an adverse inference against that party.
26. The Respondent's failure to file an Affidavit of Means is not a mere procedural technicality; it is a substantive breach of her duty to assist the Court in arriving at an equitable apportionment as required under section 114 of the Children Act. By withholding her financial information, she effectively paralysed the trial court's ability to conduct a balanced means-test. Furthermore, as seen in ***Kundu v Muyekho (Civil Appeal E094 of 2023) KEHC 3469 (KLR)***, a trial court errs when it fails to properly analyse both parties' financial means before determining maintenance amounts, leading to an erroneous and unfair verdict.
27. Consequently, this Court draws a strong adverse inference against the Respondent. The Court presumes, as a matter of law, that the Respondent possesses substantial, undisclosed financial capacity—specifically, the earning capacity of a senior nursing professional—which she deliberately concealed to shift a disproportionate burden onto the Appellant.

28. Having evaluated the factual background and the evidentiary posture of the parties, this Court distils the following core issues for determination in this appeal:
- a) Whether parental responsibility can be legally extended and enforced for an adult child pursuing tertiary education under section 35 of the Children Act, 2022
 - b) Whether the Appellant is legally bound to finance an inflated fee structure resulting from the Respondent's unilateral decision to transfer the child to a private university.
 - c) Whether the trial court's orders mandating the payment of related expenses and comprehensive medical cover are vague, oppressive, and legally untenable.
 - d) Whether the trial court's apportionment of responsibilities violates the constitutional principle of equal parental responsibility;

Extension of Parental Responsibility over an Adult Child

29. The child, born in July 2005, attained the age of majority in July 2023. Under ordinary circumstances, the legal obligations of parents to provide maintenance extinguish upon a child reaching 18 years of age. The Appellant implicitly suggests that his burden is a form of ongoing punishment, though he has not formally applied to strike out the maintenance entirely strictly on the basis of age.
30. However, the law recognizes that the transition to adulthood does not instantaneously confer economic independence, particularly in the modern era where tertiary education is a prerequisite for gainful employment and social mobility. The legislative framework in Kenya anticipates this reality. Section 35(1) of the Children Act provides that parental responsibility may be

extended beyond the eighteenth birthday if the Court is satisfied, either of its own motion or on application, that special circumstances exist with regard to the welfare of the child.

31. Kenyan courts, interpreting this provision and its predecessor in the 2001 Act, have consistently held that the pursuit of higher education constitutes a special circumstance warranting the extension of parental responsibility. In ***C.M vs. S.W.A (Civil Appeal No. 21 of 2018)***, the Court noted that parents having set high standards for their children have a responsibility to promote their social progress, and it is against the child's right to education to discontinue their schooling prematurely simply on account of them becoming adults.
32. Similarly, in ***JNT v JWO & another [2019] KEHC 12009 (KLR)***, the Court noted that while there is no automatic legal duty to maintain an adult child, an application highlighting ongoing university education activates the Court's discretion to extend the obligation to pay university fees.
33. Therefore, this Court affirms that the Appellant and the Respondent remain under a continuing, joint legal obligation to support the child through the completion of her undergraduate studies. The obligation exists; what is in dispute is the quantum and the equitable apportionment of that obligation.

The Transfer and the Escalation of Educational Costs

34. The Appellant's most potent grievance is the Respondent's unilateral decision to transfer the subject child from JKUAT, a public university, to Kabarak University, a private institution. Documentary evidence confirms that the fee structure at JKUAT was Kshs 108,064/= for the first trimester and Kshs 104,323/- for subsequent trimesters. Conversely, the costs at Kabarak University approach Kshs 150,000/= per trimester, inclusive of clinical placement fees and accommodation.

35. The law on educational choices and maintenance is unequivocally clear. Article 53(1)(e) of The Constitution mandates equal responsibility of the mother and father to provide for the child. This equality demands mutual consultation on major decisions impacting the child's welfare and the parents' financial liabilities. Parental responsibility must be exercised reasonably and in consultation; a parent cannot unilaterally impose an enhanced financial burden and expect automatic enforcement against the other.
36. This principle was expounded in the recent case of ***JNM v LGM [2025] KEHC 18158 (KLR)***, which the parties failed to reference. In that matter, the Court ruled that expenses arising from unilateral decisions—in that instance, a unilateral relocation resulting in higher transport costs—cannot be automatically imposed on the other parent. The Court characterized such expenses as consequences of personal choice rather than core child maintenance, noting that maintenance must be reasonable, necessary, and proportionate.
37. Applying these binding principles, the Respondent's unilateral transfer of the child to a significantly more expensive private university constitutes a breach of collaborative parental responsibility. While the Respondent has the absolute liberty to seek a different, perhaps perceived as superior, educational environment for her daughter, she does not possess the legal authority to unilaterally bind the Appellant to the inflated costs of that unilateral choice without his express consent. The trial court erred in failing to consider the financial baseline that existed prior to the unilateral transfer.
38. Accordingly, this Court finds that the Appellant's financial liability regarding university fees must be equitably pegged to the fee structure of the original institution (JKUAT) to which he had already committed and which was within the contemplation of the parties. Any premium or excess cost incurred as a

direct result of attending Kabarak University shall be borne exclusively by the Respondent, who initiated the transfer, or by the adult child herself.

39. The Appellant provided WhatsApp evidentiary extracts demonstrating that the subject child actively declined to apply for the Higher Education Loans Board (HELB) funding. In the exchange, the child states: *"No I have not applied for helb. I don't know if you've watched the news but currently helb has no funding for allocation,"* to which the Appellant logically responds that HELB does have funds and disbursements are ongoing.
40. The creation of the Higher Education Loans Board (HELB) through Cap 213A was a deliberate state intervention to ensure access to higher education and alleviate the financial strain on parents and guardians. Where state-subsidized loans and scholarships are available, it is an established principle of equity that parties must mitigate their financial burdens.
41. In the case of ***A N M v P M N [2016] KEHC 256 (KLR)***, the Court ordered that an adult child pursuing university education must apply to the Higher Education Loans Board (HELB) to obtain alternative funding for fees, and the parent would only be liable for the outstanding balance and expenses. The adult child in this matter cannot act indolently, refuse to utilize available statutory funding on the basis of unverified news reports regarding state allocations, and subsequently demand that her parents, specifically the Appellant, liquidate their assets to cover the entirety of her private university fees. The duty to mitigate is binding in family financial remedies just as it is in civil damages.
42. That being said, this Court is alive to the fact that not every application for HELB funding is successful. The Court directs that the child must apply for HELB funding. Consequently, the Appellant's liability for tuition fees shall be

strictly net of any loan, bursary, or scholarship that the child receives from HELB or the Universities Fund.

The Vagueness of Related Expenses and Comprehensive Medical Cover

43. The trial court ordered the Appellant to pay "college fees and related expenses till completion" and to provide a comprehensive medical cover. The Appellant argues that these terms are dangerously ambiguous and render him susceptible to endless, unquantifiable financial demands.
44. The necessity for precision in judicial decrees cannot be overstated, particularly in maintenance orders where non-compliance carries the threat of committal to civil jail for contempt. 'Related expenses' is a nebulous term that could encompass anything from necessary academic textbooks to extravagant social activities, electronics, or personal travel. It must be quantified or strictly defined by the Court to prevent perpetual litigation.
45. Regarding medical cover, the documentary evidence reveals that university fee structures (both at JKUAT and Kabarak) already incorporate mandatory medical subscription fees (e.g., Kshs 3,500/= per trimester) which grant students access to university healthcare facilities.
46. The trial court's directive demanding a comprehensive medical cover—which in the private insurance market typically denotes premium, high-limit inpatient and outpatient corporate packages costing tens or hundreds of thousands of shillings annually—is excessive, disproportionate, and ungrounded in the child's actual, proven medical needs. There is no evidence on record that the child suffers from a chronic ailment requiring such an opulent policy.

47. The Court finds that the Appellant's obligation to provide medical care is fully discharged by ensuring the child's active enrolment in the national statutory health scheme and paying the mandatory university medical fee. The order for a private comprehensive medical cover is oppressive and is hereby struck out.

Proportionality and the Re-Appportionment of Parental Responsibility

48. Article 53(1)(e) of The Constitution dictates that parents have an equal responsibility to provide for the child. However, courts have firmly settled that equal responsibility does not translate into a rigid, mathematical 50:50 financial split.
49. The trial court allocated food, shelter, clothing, and utilities to the Respondent, and college fees, related expenses, and medical cover to the Appellant. The Appellant argues that his financial burden (approximately Kshs 453,000/= annually) drastically outweighs the Respondent's burden (approximately Kshs 210,000/= annually).
50. While the Court acknowledges that the Appellant has substantial means as evidenced by the exhaustive M-Pesa records, the Court has also drawn a severe adverse inference against the Respondent for concealing her income as a nursing professional. The inescapable conclusion is that both parties possess the capacity to contribute significantly to their adult daughter's education.
51. The trial court's apportionment is inherently flawed because it failed to cap the Appellant's liabilities, exposing him to the unchecked inflation of the private university chosen unilaterally by the Respondent, and further burdened him with vague directives. To restore constitutional equity, the financial obligations must be restructured with certainty and proportionality. In

MBO v MNM (Civil Appeal E114 of 2023) [2025] KEHC 10953 (KLR), the Court demonstrated that appellate courts must intervene to reduce or cap maintenance amounts when they are deemed excessive or fail to reflect the proportional capacity of the parents.

Disposition

52. In light of the foregoing exhaustive analysis, this Appeal succeeds in part. The judgment and decree of the Milimani Children's Court delivered on 26 July 2024 in Children's Case No. 797 of 2019 is hereby set aside and substituted with the following orders:

- (i) It is hereby declared that the parental responsibility of both the Appellant and the Respondent is extended pursuant to section 35 of the Children Act, 2022, strictly for the duration of the subject child's current undergraduate degree program.
- (ii) The Appellant shall be responsible for the payment of the child's university tuition fees. However, this liability is strictly capped at the equivalent rate of the Jomo Kenyatta University of Agriculture and Technology (JKUAT) fee structure prevailing at the time. The Appellant's financial liability for tuition fees shall be reduced by the exact quantum of any loan, bursary or scholarship awarded to the child.
- (iii) Any tuition fees, accommodation costs, or clinical placement charges levied by Kabarak University that exceed the capped JKUAT rate shall be borne exclusively by the Respondent.

- (iv) The trial court's order regarding "related expenses" is hereby varied for certainty. The Appellant shall be responsible for purchase of school-related material and academic activities.
- (v) The Appellant shall ensure that the child is enrolled in the national statutory health scheme and pay the mandatory medical subscription fee billed directly within the university fee structure. The Appellant shall also cater for any out-of-pocket medical expenses that are not covered under the two schemes.
- (vi) The Respondent shall continue to bear full responsibility for the provision of food, shelter, clothing, and utilities for the child, particularly during academic holidays, as her proportional contribution to the child's upkeep.
- (vii) Each party shall bear their own costs for both the trial court and this appeal.

DATED AND DELIVERED AT NAIROBI THIS 17 DAY OF APRIL 2026

**HELENE R. NAMISI
JUDGE OF THE HIGH COURT**

Delivered on virtual platform in the presence of:

For Appellant:	in Person
For Respondent:	Mr. Mwangi h/b Mr. Otwal
Court Assistant	Lucy Mwangi