



**MP v BCK (Family Appeal E183 of 2025)
[2026] KEHC 6108 (KLR) (Family) (28 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 6108 (KLR)

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

FAMILY

FAMILY APPEAL E183 OF 2025

CJ KENDAGOR, J

APRIL 28, 2026

BETWEEN

MP APPELLANT

AND

BCK RESPONDENT

RULING

1. Simultaneously with the filing of the present appeal, the Applicant moved this Court by Notice of Motion dated 5th November, 2025 seeking the following orders:
 - a) For reasons to be recorded, the Application herein be certified urgent and be heard ex parte in the first instance for purposes of prayers hereof.
 - b) That there be a stay of execution and/or enforcement of orders delivered on 24th October, 2025 in Children’s Case No. 1504 of 2018 pending the hearing and determination of the appeal lodged herein and computation of the amount in arrears.
 - c) That pending the hearing and determination of the substantive appeal, there be an interim stay of the warrants of arrest and/or any execution proceedings issued or intended to be issued against the Applicant in enforcement of the said judgment.
 - d) That the Applicant be allowed to continue paying Kshs. 25,000/= monthly, being the amount he has consistently paid towards the minor’s maintenance, to the extent of his financial capability.
 - e) That this Honourable Court, under its inherent powers pursuant to Section 118 of the Children Act, 2022, be pleased to make such interim orders or directions as it may deem necessary or fit in the best interests of the minor.



- f) Costs of this Application be in the cause.
2. The application is supported by the Supporting Affidavit sworn on 5th November, 2025, in which the Applicant depones that judgment was delivered on 24th October, 2025 directing him to pay monthly maintenance of Kshs.20,000/= and to settle arrears of Kshs.445,200/= said to arise from a Parental Responsibility Agreement previously set aside. He contends that following a reconciliation and proceedings of 14th November, 2023, the operative arrears stood at Kshs.293,000/=, which he avers has since been settled through consistent monthly payments of Kshs.25,000/=.
 3. He further depones that he was declared redundant, has no independent source of income, and is dependent on the goodwill of his wife and friends. It is his case that the orders requiring payment of the alleged arrears in instalments, failing which warrants of arrest would issue, are harsh and would occasion him substantial loss, including incarceration, thereby prejudicing both himself and the minor.
 4. The application is opposed. In the Replying Affidavit sworn on 3rd February, 2026, the Respondent depones that the application is misconceived and intended to delay enforcement of lawful orders. She states that following the reconciliation adopted by the Court in November 2023, the total sum due stood at Kshs.493,000/=, out of which the Applicant was required to pay Kshs.150,000/= within 21 days pursuant to the court's directions of 14th November, 2023, failing which warrants of arrest would issue.
 5. She avers that the Applicant failed to comply with that order and instead commenced payments of Kshs.25,000/= from 12th December, 2023, of which only Kshs.5,000/= was applied towards arrears. She sets out that over a period of 22 months, only Kshs.110,000/= has been paid towards arrears, leaving a substantial balance outstanding. She further depones that there are additional sums due in respect of upkeep and school fees, and contends that the Applicant has consistently evaded responsibility and only pays when compelled by enforcement measures.
 6. In response, the Applicant swore a Further Affidavit on 3rd March, 2026 in which he reiterates his position and disputes the Respondent's computation. He maintains that the figure of Kshs.293,000/= was the operative balance after reconciliation and that it is misleading to rely on earlier figures. He asserts that he has consistently paid Kshs. 25,000 monthly since December 2023, demonstrating good faith compliance, and denies that he owes the sums alleged.
 7. He further disputes the allegations regarding his conduct, including claims of absconding and failure to support the minor, and contends that the threat of arrest is disproportionate and would occasion him substantial loss by impairing his ability to continue supporting the child. He maintains that his appeal raises arguable issues and that, absent stay, the appeal will be rendered nugatory.

Submissions:

8. Parties filed written submissions in respect of the application. The Applicant filed submissions dated 2nd April, 2026 in support of both the appeal and the application for stay. It is submitted that the appeal raises fundamental questions on the proper application of the law on parental responsibility, the limits of judicial discretion in maintenance orders, and the need for proportionality in decisions affecting family life. The Applicant contends that the trial court erred both in law and fact by imposing financial obligations and enforcement measures that were unjustified, disproportionate, and contrary to established principles.
9. On the issue of arrears, the Applicant submits that the trial court erred in enforcing what is described as a set-aside Parental Responsibility Agreement. Reference is made to the ruling delivered on 7th November, 2023, which set aside the agreement dated 22nd May, 2019. It is argued that despite this,



the trial court proceeded to enforce arrears said to arise from that very agreement, thereby effectively reviving obligations founded on a nullity. Reliance is placed on the decision in *Kenya Commercial Bank Limited v Specialized Engineering Co. Ltd* [1982] eKLR for the proposition that a Court cannot enforce a contract that is void or has been set aside. The Applicant also cites *Macfoy v United Africa Co. Ltd* [1961] 3 All ER 1169, and adopts the well-known passage that:

“If an act is void, then it is in law a nullity... you cannot put something on nothing and expect it to stay there. It will collapse.”

10. It is therefore submitted that the finding on arrears was erroneous and legally unsustainable.
11. On maintenance and financial capacity, the Applicant submits that the trial court failed to properly consider his financial position. Reliance is placed on Article 53 (2) of *the Constitution*, with the argument that the best interests of the child must be assessed in a realistic manner, taking into account the means of both parents. It is contended that the Applicant demonstrated financial incapacity arising from redundancy, advanced age, and lack of income, but that this was not adequately considered. It is further submitted that the Respondent unilaterally enrolled the minor in an expensive school without regard to the Applicant’s financial position, thereby contributing to the accumulation of arrears.
12. The Applicant also relies on Section 94 of the *Children Act, 2022* and the decision in *ZAK v MA* [2013] eKLR for the proposition that parental responsibility is shared and must be exercised in accordance with each parent’s means. Further reliance is placed on *P.O. v M.O.* [2014] eKLR and *JKN v HWN* [2019] eKLR, where the Courts emphasised that maintenance orders must be realistic and within the paying parent’s ability, failing which they become oppressive.
13. It is further submitted that the Applicant is of advanced age and faces practical difficulty in securing employment, and that despite these constraints, he has continued to make payments of Kshs.25,000/= monthly, which is said to demonstrate good faith.
14. On enforcement, the Applicant submits that the measures taken by the trial court, including warrants of arrest and travel restrictions, were punitive and disproportionate. Reliance is placed on *MW v KC* [2018] eKLR and *A.M.M v J.K.N.* [2016] eKLR for the position that maintenance is intended to secure the welfare of the child and not to punish a parent who is unable to comply due to genuine financial constraints. It is argued that arrest and restriction of movement would further diminish the Applicant’s ability to provide support and would not serve the best interests of the child.
15. The Applicant therefore urges the Court to find that the trial Court misdirected itself in law and fact, and to allow the appeal, set aside the orders on arrears, and grant stay of execution.
16. The Respondent filed submissions dated 13th April, 2026 opposing both the appeal and the application for stay. It is submitted that the judgment delivered on 24th October, 2025 was well founded in law and fact, and was directed at safeguarding the welfare of the minor in light of the Applicant’s continued default.
17. On the question of arrears, the Respondent submits that the Applicant’s argument that the trial court revived a Parental Responsibility Agreement is misplaced. It is argued that the arrears enforced arose from a reconciliation undertaken in November 2023, which was prepared by both advocates and adopted by the Court. That reconciliation, it is submitted, placed the arrears at Kshs.493,000/=. The Applicant is said to have failed to comply with the agreed timelines, resulting in a substantial outstanding balance. It is further submitted that the Applicant’s reliance on the figure of Kshs.293,000/= ignores the structure of the Court order and his failure to meet the initial payment required within the prescribed period.



18. On maintenance, it is submitted that parental responsibility is a joint obligation under the *Children Act*, 2022. Reliance is placed on *MAK v RMAA & 4 others* [2023] KESC 21 (KLR) for the principle that the best interests of the child are paramount, and on *MNM v SNK* (Civil Appeal E008 of 2022) [2023] KEHC 3915 (KLR) for the position that while responsibility is shared, contribution is to be assessed based on the respective means of each parent. The Respondent submits that the Applicant's plea of financial incapacity is not borne out by his conduct. He is said to have failed to comply with Court orders, evaded responsibility, and only resumed payments after enforcement measures were undertaken.
19. It is further submitted that the Respondent has borne the greater burden of the child's upkeep, including school fees, even after transferring the child to a more affordable school at the Applicant's request. Despite this, the Applicant is said to have continued in default, thereby shifting the responsibility unfairly onto the Respondent.
20. On enforcement, it is submitted that the measures taken by the trial Court, including the issuance of warrants of arrest, were lawful and justified in the circumstances. Reliance is placed on Section 121 of the *Children Act*, 2022, which empowers the court to enforce maintenance orders, including through coercive measures where there is wilful default. The Respondent maintains that the Applicant's conduct, including failure to comply with timelines and only making payments after arrest, justified the enforcement steps taken.
21. Counsel also relies on *Hadkinson v Hadkinson* (1952) 2 All ER 56 for the principle that a party against whom a Court order has been made is under an obligation to comply with it unless and until it is set aside, and that disobedience disentitles such a party from seeking the Court's indulgence.
22. It is therefore submitted that the Applicant has not demonstrated substantial loss, has not offered security, and has not approached the Court with clean hands. The Court is urged to dismiss both the appeal and the application for stay with costs.

Analysis & Determination:

23. Having considered the application herein, the response thereto and the submissions of parties, the issues for determination may be distilled as follows:
 - a) Whether the Applicant has met the threshold for the grant of stay of execution pending appeal under Order 42 Rule 6 of the Civil Procedure Rules.
 - b) Whether the orders sought are merited in the circumstances.
24. This application is brought under Order 42 Rule 6 of the Civil Procedure Rules. Under Order 42 Rule 6(2), an Applicant must satisfy three conditions:
 - a) that he will suffer substantial loss unless the order is made; b) that the application has been made without unreasonable delay; and
 - c) that such security as the Court orders has been given.
25. The Court of Appeal in *Butt v Rent Restriction Tribunal* [1982] KLR 417 held that the power to grant stay is discretionary, to be exercised in such a way as not to prevent an appeal, while at the same time ensuring that a successful party is not deprived of the fruits of judgment without just cause.



26. Similarly, in *Kenya Shell Limited v Kibiru & Another* [1986] KLR 410, the Court stated:

“Substantial loss in its various forms is the cornerstone of both jurisdictions for granting stay.”

27. There is no issue as to delay. The impugned orders were delivered on 24th October, 2025, and the present application is dated 5th November, 2025. The application was therefore brought promptly and within a reasonable time. That limb of Order 42 Rule 6(2) is satisfied and does not fall for further consideration.
28. The Applicant’s case is that he lacks the financial means to comply with the impugned orders, that he has already settled the arrears, and that the threat of arrest will occasion him prejudice and render the appeal nugatory. He further maintains that he has consistently remitted Kshs.25,000/= monthly and has thereby demonstrated good faith.
29. The proceedings of 14th November, 2023 are instructive. The trial Court directed the Applicant to pay Kshs.200,000/= less Kshs.50,000/= within 21 days, in default of which warrants of arrest would issue. It was only thereafter, by consent, that the balance of Kshs.293,000/= was to be apportioned. The structure of that order is therefore manifestly clear.
30. The figure of Kshs.293,000/= did not arise as an unconditional figure; it was contingent upon compliance with the initial payment within the prescribed period. The Applicant’s attempt to isolate that figure and treat it as the operative arrears does not accord with the terms of the order.
31. No material has been placed before this Court to demonstrate that the Applicant complied with that primary obligation. In the absence of such evidence, the foundation upon which he builds his case on settled arrears becomes doubtful in my view. Indeed, the Applicant asserts that he has consistently paid Kshs.25,000/= monthly and has thereby cleared the arrears. That assertion, however, is not supported by any evidence on the record as none has been annexed to his application.
32. Further, the Applicant relies on alleged redundancy to demonstrate the inability to pay. The annexed document, for that purpose, is illegible and incapable of verification. The Court is unable to discern its contents or authenticity. No additional material has been provided to substantiate the alleged loss of employment or absence of income. In those circumstances, the assertion of financial incapacity remains unproven.
33. On the other hand, as is discernible from the record, the Respondent has, in her Replying Affidavit sworn on 3rd February, 2026, set out a structured account of payments made and the outstanding balance, including the manner in which the monthly remittances were apportioned. That account has not been displaced by any material from the Applicant. The evidential balance therefore tilts in favour of the Respondent’s position.
34. In those circumstances, the Court is not satisfied that the Applicant has demonstrated substantial loss within the meaning of Order 42 Rule 6. The apprehension of arrest, in the face of a subsisting Court order and absent proof of compliance or inability to comply, does not amount to substantial loss. Needless to say, it is a lawful consequence of enforcement proceedings, of which the Applicant is bound.
35. As regards security, Order 42 Rule 6(2)(b) requires an Applicant to furnish such security as the Court may order for the due performance of the decree. The Applicant has neither offered nor addressed the issue of security. That omission is material and further weakens the application.



36. The Court is also guided by Section 4 (2) of the *Children Act*, 2022, which provides that the best interests of the child shall be the primary consideration in all matters concerning the child. The orders sought to be stayed relate to maintenance. Such orders are intended to secure the welfare of the child and should not be interfered with lightly. A party seeking to stay them must meet the statutory threshold with clarity and precision.
37. Regrettably, the Applicant has not done so.
38. Having said so, should the Court then exercise its discretion in favour of the Appellant/ Applicant? The prayers sought by the Applicant, namely that the warrants of arrest be suspended and leave be granted to continue remitting Kshs.25,000/= monthly, are in substance ancillary to the primary prayer for stay of execution. They invite this Court to intervene in the enforcement of subsisting orders of the trial Court and to vary, in effect, the mode and extent of compliance pending the determination of the appeal.
39. Such relief is discretionary and must be exercised judiciously, taking into account the conduct of the Applicant, the nature of the orders sought to be suspended, and the overarching consideration of the best interests of the child.
40. As the record before me bears, the warrants of arrest arise from non-compliance with orders of the court issued on 14th November, 2023, which required payment within the defined period, failing which enforcement would ensue. As already observed, there is no material placed before this Court demonstrating compliance with that order. The Applicant instead seeks to substitute that obligation with a continued remittance of Kshs.25,000/= monthly, which he asserts to be within his means.
41. However, that proposal is not supported by any verifiable account of payments made to date, nor is it reconciled with the outstanding sums as asserted by the Respondent. In the absence of such clear basis, I am unable to assess the sufficiency or adequacy of the proposed payments.
42. Further, the Court cannot ignore that the orders sought to be moderated relate to maintenance of a minor. It would be remiss not to have regard to Section 4(2) of the *Children Act*, 2022, which provides that the best interests of the child are of paramount consideration. Any intervention that has the effect of delaying or diminishing the enforcement of maintenance obligations must therefore be approached with caution.
43. The Applicant has not demonstrated that the continued enforcement of the orders, including the issuance of warrants, is unjust or disproportionate in the circumstances. They cannot be said, on the material before Court, to be excessive or unwarranted.
44. In those circumstances, there is no basis upon which this Court can properly exercise its discretion in favour of the Applicant so as to suspend the warrants of arrest or sanction the proposed mode of payment pending appeal.
45. In those circumstances, the Court is not persuaded to exercise its discretion in favour of the Applicant.

Disposition

46. Accordingly, the Notice of Motion dated 5th November, 2025 is hereby dismissed.
47. Costs shall abide the outcome of the appeal.

DATED, SIGNED AND DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS DAY OF 28TH APRIL, 2026.



HON C KENDAGOR

JUDGE

In the presence of:

Court Assistant:: Berly

Mr. Ojala Advocate holding brief for Mr Ochieng Advocate for the Respondent

No attendance for the Appellant

