



**GG v CMM & another (Civil Appeal E021 of 2024)
[2026] KEHC 6069 (KLR) (Family) (7 May 2026) (Judgment)**

Neutral citation: [2026] KEHC 6069 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
CIVIL APPEAL E021 OF 2024
HK CHEMITEI, J
MAY 7, 2026**

BETWEEN

GG APPELLANT

AND

CMM 1ST RESPONDENT

CWG 2ND RESPONDENT

JUDGMENT

1. This judgment relates to the memorandum of appeal dated 8th March, 2024 filed by the Appellant, Gatheru Gathemia, based on the Grounds That:-
 1. That the Learned Magistrate erred in law and fact by ordering that the Appellant solely provides maintenance, school fees and all other related expenses of the 2nd Respondent without conducting a proper inquiry and assessment into the income levels of both parents and their respective financial responsibilities thereby jeopardizing the Appellant's right to Education.
 2. That the Learned Magistrate erred in law and fact by ordering that the Appellant solely provides school fees and related expenses in contravention to the express provisions of the Children's Act and the Kenyan Constitution 2010 which provide for equal and shared responsibility for both the mother and the father to provide for any child.
 3. That the Learned Magistrate erred in law and fact by ordering that the Appellant solely provides for the 2nd Respondent by failing to take into regard the undisputed fact that the Appellant's fast deteriorating health as supported by medical reports from his doctors has affected his income.



4. That the Learned Magistrate erred in law and fact by making reliance on the holding in another children's matter between the Appellant and the 1st Respondent, yet the Court file for the other matter was neither before her for hearing and determination nor for reference by the Court.
2. The Appellant prays for Orders That:
 - A. The ruling and order of the Case No. 3 of 2023 initially filed as HCFOS No. E080 of 2023 be and is hereby set aside.
 - B. The present appeal be and is hereby allowed in the following terms:
 - a. The 1st Respondent be ordered to provide for school/ tuition fees and maintenance of not less than 50% of all the needs of the 2nd Respondent until she attains the age of 24 years or otherwise completes her university college education.
 - C. The court grants any further orders in the interest of justice.
3. The Appellant has filed written submissions dated 11th August, 2025 wherein it is contended that the trial court improperly imposed the entire financial burden upon him without undertaking a proper inquiry into the income, financial capabilities and respective obligations of both parents, contrary to the constitutional and statutory principle of equal parental responsibility.
4. The Appellant submits that the 2nd Respondent had initially been adopted by both parties and that following the 1st Respondent's relocation to the United Kingdom in July 2022, the Appellant remained the sole provider for her upkeep despite suffering deteriorating health occasioned by diabetes, hypertension and other complications that substantially diminished his earning capacity.
5. He avers that the 1st Respondent is financially stable, resides in the United Kingdom, earns substantial income from employment and rental properties and has consistently failed to disclose her income or contribute towards the 2nd Respondent's upkeep.
6. According to the Appellant, the evidence presented before the trial court demonstrated that the 1st Respondent had sufficient means to share in the maintenance obligations but deliberately avoided disclosure of her earnings and financial resources.
7. The Appellant further argues that the trial court misapprehended the law governing parental responsibility under Article 53 of *the Constitution* and Sections 23, 24, 32, 94, 101, 102, 110 and 114 of the Children's Act, which recognize that maintenance of a child is a joint and equal obligation of both parents.
8. He relies on various authorities, including T.P.J v J.K.R [2015] eKLR, C.I.N v J.N.N [2014] eKLR, MMM v SNK [Civil Appeal E008 of 2022] and Awuah Aggrey v Roslyn Awuah [2021], for the proposition that courts are required to consider the income, earning capacity, needs, obligations and circumstances of both parents before apportioning parental responsibility. He contends that the trial court failed to interrogate these factors and instead improperly shifted the entire burden of maintenance to him despite evidence that the 1st Respondent was financially capable of contributing towards the child's education and upkeep.
9. It is further submitted that the trial court relied on proceedings and findings from another children's matter involving the parties and their biological child, despite the relevant court file not having been formally placed before the court. The Appellant argues that this amounted to reliance on extraneous material and resulted in procedural unfairness.



10. He maintains that the trial court failed to appreciate the special circumstances of the case, including his declining health, reduced earning capacity and the 1st Respondent's comparatively stronger financial position. The Appellant therefore urges the appellate court to set aside the orders requiring him to solely maintain the 2nd Respondent and instead substitute them with orders directing both parents to equally share responsibility for the 2nd Respondent's maintenance, tuition and educational expenses pending completion of her university education.
11. The 2nd Respondent has filed written submissions dated 22nd August, 2025 wherein she supports the Appellant's appeal against the ruling delivered on 9th February, 2024, adopts and supports the grounds of appeal challenging the trial court's failure to inquire into the income levels, financial means and respective obligations of both parents before imposing the entire financial burden upon the Appellant. She contends that the orders violated the constitutional principle of equal parental responsibility and improperly relied on proceedings in another children's matter that was not formally before the court.
12. The 2nd Respondent states that she was adopted by the Appellant and the 1st Respondent in 2004 and, although she has attained the age of majority, she remains dependent on parental support in order to complete her education, presently pursuing a diploma course at Mount Kenya University.
13. She avers that after the 1st Respondent relocated to the United Kingdom in July 2022, the Appellant became the sole provider for her tuition and upkeep. However, due to his deteriorating health and escalating medical expenses, he has become financially strained and unable to continue solely meeting all her educational and maintenance needs.
14. Evidence adduced during viva voce proceedings established that the 1st Respondent owns several income-generating properties in Nairobi and earns substantial income in the United Kingdom, estimated at approximately Kshs. 265,000/= per month, yet has contributed minimally towards the 2nd Respondent's upkeep since relocating abroad.
15. The submissions further emphasize that the Appellant suffers from multiple serious medical conditions, including hypertension, diabetes, hypercholesterolemia and complications arising from brain surgery and other surgical procedures, all of which have significantly affected his earning capacity and increased his financial obligations. It is contended that despite the Appellant continuing to support the 2nd Respondent and another child of the family, the 1st Respondent has failed to demonstrate any meaningful contribution towards the 2nd Respondent's maintenance.
16. Reliance is placed on Articles 53 (1) (e) and 53 (2) of *the Constitution*, Sections 110 and 114 of the Children's Act, and authorities such as EMK alias A v SSS [2022] KEHC 154 (KLR), C.I.N v J.N.N [2014] eKLR, PKM v ANM [2020] eKLR and SAK v ZDNP [2019] eKLR, all cited for the proposition that parental responsibility is a joint and equal obligation of both parents and that maintenance orders should neither be oppressive nor punitive to one parent.
17. The 2nd Respondent therefore urges the court to consider the constitutional requirement of equal parental responsibility, the best interests of the child and the financial circumstances of both parties. It is submitted that the evidence demonstrates that the 1st Respondent possesses sufficient financial means to contribute equally towards the 2nd Respondent's upkeep and education, whereas the Appellant's medical condition and reduced earning capacity render the impugned orders unfair and unsustainable.
18. Accordingly, the 2nd Respondent prays that the appeal be allowed, the trial Court's orders be set aside and the 1st Respondent be directed to contribute on a 50: 50 basis towards the maintenance, tuition fees and educational expenses of the 2nd Respondent until completion of her university education.



Background

19. The genesis of this appeal is the Ruling in Milimani Miscellaneous Children's Case No. E3 of 2023: C. W. G. VERSUS C. M. M. & G. G., delivered by Hon. C. C. Oluoch Mrs. (Chief Magistrate) on 9th February, 2024.
20. In the ruling and order aforementioned, the trial court considered an application by the applicant, Charlene Wambui Gatheru, seeking extension of parental responsibility beyond her eighteenth birthday, adoption of the plaint as properly filed, monthly maintenance of Kshs.150,000/= and payment of school fees and related expenses.
21. The Applicant stated that she had been adopted by the Respondents, Gatheru Gathemia and Charity Muthoni Mwaura, and that they had catered for her needs until the 1st Respondent relocated to the United Kingdom in June 2022, after which she allegedly ceased participating in her upkeep. The Applicant averred that she had been admitted to Daystar University to pursue a diploma course in International Relations and intended to further her studies thereafter. She maintained that the 2nd Respondent had been solely financing her education despite suffering financial hardship occasioned by ill health, while the 1st Respondent was financially capable of contributing towards her maintenance and education.
22. In response, the 1st Respondent contended that her relocation to the United Kingdom had been facilitated by the 2nd Respondent and was influenced by marital difficulties and concerns for her safety. She further deponed that she was solely supporting their biological child despite existing maintenance orders against the 2nd Respondent.
23. The 1st Respondent disputed the necessity of the proceedings on extension of parental responsibility and challenged the applicant's academic status, asserting that investigations had revealed irregularities in her academic documents leading to the termination of her studies at Daystar University.
24. The 2nd Respondent, on his part, maintained that the 1st Respondent deserted the matrimonial home and left him with the responsibility of maintaining both the Applicant and another child who was also pursuing university education. He further stated that his longstanding hypertension had adversely affected his ability to work and earn income. The applicant subsequently informed the court that she had enrolled in a bridging programme and secured alternative admissions at Gretsua University and Mount Kenya University, thereby seeking extension of parental responsibility until attainment of twenty-four years to enable completion of her education.
25. Upon considering the pleadings, affidavits and submissions, the court found that it was undisputed that the Respondents bore parental responsibility over the applicant by virtue of the adoption order and that the applicant, though having attained majority age, had not completed her education.
26. The court observed that the parties did not oppose the extension of parental responsibility and identified the principal issue for determination as the extent to which each parent ought to contribute towards the applicant's upkeep.
27. In determining the issue, the court relied on Section 114 (2) of the Children's Act, 2022 and the decision in T.P.J v J.K.R [2015] eKLR, which outline the factors to be considered in apportioning parental responsibility, including the income, earning capacity, financial obligations and needs of the parents and child. The court further noted that the applicant's academic circumstances had changed following the termination of her studies at Daystar University and the subsequent admissions to alternative institutions, thereby rendering the exact extent of her financial needs uncertain at that stage.



28. The court also considered that there existed another child of the marriage who was under the actual custody and maintenance of the 1st Respondent and in respect of whom separate maintenance proceedings and appeals were pending. The court held that the issue of parental contribution could not be fairly determined in isolation from the broader responsibilities borne by each parent.
29. Consequently, the court considered it prudent, pending full hearing and determination of the matter, to direct that the 2nd Respondent continues catering for the applicant's needs while the court later interrogated the precise educational and financial needs of the Applicant against the means and obligations of both parents. Ultimately, the court extended parental responsibility over the applicant beyond her eighteenth birthday and ordered that the 2nd Respondent cater for all her needs pending further directions of the court.

Analysis And Determination

30. I have carefully considered the memorandum of appeal and the rival submissions thereto and address them as follows:
31. This being a first appeal, the court is enjoined to re-evaluate and re-analyze the entire evidence on record and arrive at its own independent conclusion, while bearing in mind that it did not have the advantage of seeing and hearing the witnesses. The guiding principles are well settled, including the duty to subject the impugned decision to fresh scrutiny and determine whether the trial court misdirected itself in law or fact as was established in *Mursal & Another v Manese* (suing as the legal administrator of Dalphine Kanini Manesa) (Civil Appeal E20 of 2021) [2022] KEHC 282 (KLR) (6 April 2022) where the court stated as follows: "First appellate court is mandated to re – evaluate the evidence before the trial court as well as the judgment and arrive at its own independent judgment on whether or not to allow the appeal. A first appellate court is empowered to subject the whole of the evidence to a fresh and exhaustive scrutiny and make conclusions about it, bearing in mind that it did not have the opportunity of seeing and hearing the witnesses first hand."
32. The appeal before the court challenges the propriety of the trial court's decision directing the Appellant to solely cater for the maintenance, tuition fees and all educational expenses of the 2nd Respondent pending determination of the substantive suit. The central issue arising for determination is whether the learned magistrate properly exercised judicial discretion in apportioning parental responsibility and whether the impugned orders were consistent with the constitutional and statutory framework governing maintenance of children and extension of parental responsibility beyond the age of majority.
33. In *NKG v SGB* [2024] KEHC 5658 (KLR) the court pronounced itself as follows: "... 22. Since the two issues are intertwined, I will deal with them together. I must be guided at all times by the mantra that the best interest of a child principle is paramount when dealing with children matters. 23. Article 53 (2) of *the Constitution* provides: "A child's best interests are of paramount importance in every matter concerning the child." 24. Section 8(1) of the Children's Act 2022 provides; a. 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. 25. The First Schedule of the Children's Act 2022 lists down the considerations to be taken into account when ascertaining what is in the best interest of a child: -
 1. The age, maturity, stage of development, gender, background and any other relevant characteristic of the child.



2. Distinct special needs (if any) arising from chronic ailment or disability.
 3. The relationship of the child with the child's parent(s) and/or guardian(s) and any other persons who may significantly affect the child's welfare.
 4. The preference of the child, if old enough to express a meaningful preference.
 5. The duration and adequacy of the child's current living arrangements and the desirability of maintaining continuity.
 6. The stability of any proposed living arrangements for the child;
 7. The motivation of the parties involved and their capacities to give the child love, affection and guidance.
 8. The child's adjustment to the child's present home, school and community.
 9. The capacity of each parent or guardian to allow and encourage frequent and continuing contact between the child and the other parent and/or guardian(s), including physical access.
 10. The capacity of each parent and/or guardian(s) to cooperate or to learn to cooperate in child care.
 11. Methods for assisting parental and/or guardian cooperation and resolving disputes and each parent's/guardian's willingness to use those methods.
 12. The effect on the child if one parent/guardian has sole authority over the child's upbringing.
 13. The existence of domestic abuse between the parents/guardian(s), in the past or currently, and how that abuse affects the emotional stability and physical safety of the child.
 14. The existence of any history of child abuse by a parent and/or guardian(s); or anyone else residing in the same dwelling as the child.
 15. Where the child is under one year of age, whether the child is being breast-fed.
 16. The existence of a parent's or guardian(s) conviction for a sex offense or a sexually violent offense under the [Sexual Offences Act](#).
 17. Where there is a person residing with a parent or guardian, whether that person -
 - a. been convicted of a crime under this Act, the [Sexual Offences Act](#), the Penal Code, or any other legislation.
 - b. has been adjudicated of a juvenile offence which, if the person had been an adult at the time of the offence, the person would have been convicted of a felony.
 18. Any other factor which may have a direct or indirect effect on the physical and psychological well-being of the child..."
34. At the outset, it is not disputed that the Appellant and the 1st Respondent bear parental responsibility over the 2nd Respondent by virtue of the adoption order issued in 2004. It is equally uncontested that the 2nd Respondent, though having attained the age of eighteen years, remains dependent on parental support in order to complete her university education. The trial court was therefore properly entitled to extend parental responsibility pursuant to Section 28 of the Children's Act and Article 53 of [the Constitution](#).



35. The dispute, however, concerns the extent and manner of apportioning the attendant financial obligations between the parents. In that regard, *the Constitution* under Article 53 (1) (e) expressly provides that every child has a right to parental care and protection, which includes equal responsibility of the mother and father whether married to each other or not.
36. Sections 23, 24, 94, 101, 110 and 114 of the Children’s Act similarly contemplate that maintenance obligations are joint obligations to be borne proportionately, considering the income, earning capacity, needs, obligations and circumstances of each parent.
37. The record demonstrates that the learned Magistrate appreciated the applicable legal principles on the factors relevant in determining maintenance obligations. However, notwithstanding that acknowledgment, the court proceeded to direct the Appellant alone to cater for all the needs of the 2nd Respondent pending hearing and determination of the suit. In doing so, the trial court failed to sufficiently interrogate the evidence regarding the comparative financial abilities and obligations of the parties.
38. The material placed before the court disclosed allegations, supported by viva voce evidence and affidavits, that the 1st Respondent resided and worked in the United Kingdom, possessed income-generating properties in Nairobi and earned substantial income, while the Appellant suffered from multiple chronic illnesses, including hypertension, diabetes, hypercholesterolemia and complications arising from brain surgery, all of which had allegedly diminished his earning capacity and increased his medical expenses.
39. Although these matters required final proof at the substantive hearing, they constituted relevant considerations which the court ought to have weighed before imposing the entire burden of maintenance upon one parent.
40. Further, while the trial court was entitled to take judicial notice of the existence of related proceedings involving the parties and another child of the family, reliance on findings or obligations arising from a separate matter whose record had not formally been produced before the court risked occasioning procedural unfairness.
41. The court acknowledged the financial circumstances of the parties and the educational needs of the 2nd Respondent remained uncertain owing to the termination of her studies at Daystar University and her subsequent admission into alternative institutions. In those circumstances, the more proportionate interim order would have been one preserving the constitutional principle of shared parental responsibility pending comprehensive inquiry into the means and obligations of each parent. Maintenance orders ought not to be punitive or oppressive to one parent but must strike a balance between the best interests of the child and the financial realities of both parties.
42. Accordingly, I find that the learned Magistrate erred in principle by imposing the entirety of the maintenance burden upon the Appellant without adequate inquiry into the parties’ respective incomes, earning capacities and financial obligations.
43. However, in a related matter namely Civil Appeal No E029 of 2023 between the same parties this court, in allowing the Appellant’s appeal directed that the 1st Respondent shoulders responsibility for their son whom she is taking care of and staying with in the United Kingdom. The court concluded that:

“In light of the foregoing, the trial court’s ruling is set aside and the appeal succeeds as hereunder;

- (a) The order for a monthly maintenance of Kshs 85,000 is hereby set aside.



- (b) Both the Appellant and the Respondent shall have a joint legal custody and unimpeded access of the minor.
- (c) The suit at the trial court be set down for hearing forthwith.
- (d) Costs in the cause.”

44. It will be remiss for this Court to burden the 1st Respondent with the additional burden over the 2nd Respondent. I find it fair that pending the determination of the matter at the trial court the Appellant assumes full responsibility of the 2nd Respondent just as the 1st Respondent was taking care of the other biological child stated in the other judgement.

45. The parties may in future wish to make appropriate applications before the trial court should circumstances change.

46. In the premises and for the above reasons the appeal is disallowed with no order as to costs.

47. The parties shall fix the matter at the trial court for hearing expeditiously.

DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 7TH DAY OF MAY 2026.

H K CHEMITEI

JUDGE

