



REPUBLIC OF KENYA



**KENYA LAW**  
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**William Kiplangat Kipkemoi (Father and suing as next friend of JC and MK) v Chelangat  
(Civil Appeal E025 of 2025) [2026] KEHC 5949 (KLR) (5 May 2026) (Judgment)**

Neutral citation: [2026] KEHC 5949 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BOMET  
CIVIL APPEAL E025 OF 2025  
JK NG'ARNG'AR, J  
MAY 5, 2026**

**BETWEEN**

**WILLIAM KIPLANGAT KIPKEMOI (FATHER AND SUING AS NEXT FRIEND  
OF JC AND MK) ..... APPELLANT**

**AND**

**CAROLINE CHELANGAT ..... RESPONDENT**

*(Being an Appeal from the Ruling delivered by the Resident Magistrate, Michuki M. on  
28th May 2025 in the Magistrate's Court at Bomet, Children's Case Number E003 of 2025)*

**JUDGMENT**

1. In the trial court, the Appellant (then Applicant) filed a Notice of Motion Application dated 25<sup>th</sup> April 2025 where he sought the following orders: -
  - I. That the Defendant/Respondent be compelled to avail the minors herein at Tenwek Hospital for specialized treatment.
  - II. That the Honourable Court do issue an order transferring the minors herein from Olkaria Academy to [particulars withheld] Township Academy.
  - III. Any other order that the Honourable court may deem fit to grant in the circumstances.
2. In its Ruling dated 28<sup>th</sup> May 2025, the trial court dismissed the Appellants' Application.
3. Being aggrieved with the Ruling of the trial court, the Appellant filed his Memorandum of Appeal dated 30<sup>th</sup> May 2025 appealing against the whole Ruling.
4. My duty as the 1st appellate court is to re-evaluate and re-examine the evidence in the trial court and come to my own findings and conclusions, but in doing so, to have in mind that I neither heard nor saw the witnesses testify.



5. I hereby proceed to summarise the case in the trial court and the parties' respective submissions in the present Appeal.

### **The Appellant's/Applicant's case.**

6. Through his Supporting Affidavit dated 25<sup>th</sup> April 2025, the Appellant stated that he was the father of JC and MK while the Respondent was their mother. That on 8<sup>th</sup> August 2024, the Respondent secretly disappeared with the minors from their home. The Appellant further stated that on 5<sup>th</sup> February 2025, the trial court granted the Respondent interim custody of the minors while he was granted visitation rights pending the hearing and determination of the suit.
7. It was the Appellant's case that he visited the minors' school (Olkaria Academy) on 9<sup>th</sup> March 2025 and was unhappy within the state of the school compared to their previous school (St. Mary's Boarding Primary School). That as a responsible father, he would like to provide his children with a better education and he secured their admissions at [particulars withheld] Academy.
8. The Appellant stated that the minors had been taken sick on 19<sup>th</sup> and 30<sup>th</sup> March 2025 and the Respondent failed to take them to hospital. That he facilitated their treatment at South Lake Medical Centre. The Appellant further stated that the Respondent's conduct of denying the minors urgent medical care had strained their relationship and further blocked his access to the minors. That he had every reason to worry about the minors' health and education.
9. It was the Appellant's case that the minors had been forced to stay in an uncondusive environment and were exposed to ill health. That the minors deserve a safe and stable environment.
10. Through his Supplementary Affidavit dated 14<sup>th</sup> May 2025, the Appellant reiterated the contents of his Supporting Affidavit dated 25<sup>th</sup> April 2025.
11. Through his written submissions dated 4<sup>th</sup> November 2025, the Appellant submitted that his Application was meant to promote the minors' education, health and welfare. He relied on section 23 (1) (b) and section 24(1) of the Children's Act. That he had presented medical reports and receipts showing that the minors had recurrent illnesses that were traceable to the unhygienic and congested environment of their current school. The Respondent further submitted that the trial court dismissed the Application without making a finding that the school environment was detrimental to the minors' welfare.
12. It was the Appellant's submission that in all matters concerning children, their best interests was of paramount importance. He relied on Article 53(2) of *the Constitution* of Kenya and J.O v S.A.O (2016) eKLR. That in dismissing his Application, the trial court effectively exposed the minors to an unsuitable environment contrary to section 8(1) of the Children's Act. It was the Appellant's further submission that the Respondent bore the evidentiary burden of proving that the minors were of good health. He relied on section 107 of the *Evidence Act* and Evans Nyakwana vs Cleophas Bwana Ongaro (2015) eKLR.
13. The Appellant submitted that the trial court relied on allegations rather than medical proof thereby allowing conjecture to eclipse the consideration of the minors' welfare.

### **Response**

14. The Respondent filed a Replying Affidavit dated 8<sup>th</sup> May 2025 where she stated that the trial court interviewed the minors in camera and ascertained that they were ok and properly attending school. That she complied with the trial court's orders by availing the minors before the trial court and the



Children's Officer's Report ascertained that the minors lived in a good and stable environment. The Respondent further stated that the Appellant wanted to disrupt the minors yet they were of good health.

15. It was the Respondent's case that the Appellants took the minors for routine medical care where they were attended to and given outpatient medical care. That given the rainy conditions then, it was normal for the minors to contract common cold. It was the Respondent's further case that she had enrolled the minors to Olkaria Academy and it was in their best interest for them to continue in the day school.
16. The Respondent stated that the Appellant sought to transfer the minors to a boarding school yet he had never catered for their education. That the minors were of tender age and custody of the minors as a general rule is normally granted to their mother unless there were exceptional circumstances that would negate that. The Respondent further stated that she was a responsible parent who took care of her children.
17. Through her written submissions dated 17<sup>th</sup> November 2025, the Respondent submitted that the trial court correctly exercised her discretion when she granted her custody of the minor. That the trial court interviewed the minors in camera and being satisfied that they lived in a good, safe and stable environment. The Respondent further submitted that even though the Appellant was granted visitation rights, he had failed to exercise the said rights and had further failed to cater for the minors' upkeep.
18. It was the Respondent's submission that the children were of tender years who needed the love and care of their parents. That she had always been a responsible mother and it would be a great injustice if the minors were transferred to boarding school. It was the Respondent's further submission that the Appeal had no merit and ought to be dismissed.
19. I have gone through and carefully considered the Record of Appeal, the Appellant's written submissions dated 4<sup>th</sup> November 2025 and the Respondent's written submissions dated 17<sup>th</sup> November 2025. The only issue that I have sieved for my determination was whether the trial court erred when dismissing the Appellant's Application.
20. This being a children's matter, it is important to state that Article 53(2) of *the Constitution* of Kenya provides: -  
A child's best interests are of paramount importance in every matter concerning the child
21. Section 8 of the Children's Act Cap 141 provides: -
  - (1) 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.
  - (2) All judicial and administrative institutions, and all persons acting in the name of such institutions, when exercising any powers conferred under this Act or any other written law, shall treat the interests of the child as the first and paramount consideration to the extent that this is consistent with adopting a course of action calculated to—
    - (a) safeguard and promote the rights and welfare of the child;
    - (b) conserve and promote the welfare of the child; and



- (c) secure for the child such guidance and correction as is necessary for the welfare of the child, and in the public interest.
- (3) In any matters affecting a child, the child shall be accorded an opportunity to express their opinion, and that opinion shall be taken into account in appropriate cases, having regard to the child's age and degree of maturity.....

22. The Supreme Court of Kenya in MAK v RMAA & 4 others [2023] KESC 21 (KLR) held: -

“The children’s rights legal regime (*the Constitution*, *Children Act* (repealed), CRC, and the African Charter on the Rights and Welfare of the Child) emphasized the centrality of the best interest of the child. The best interest of the child was determined by the circumstances of the case as they specifically related to the child. That comprised the principles that prime the child’s right to survival, protection, participation, and development above other considerations and included the rights contemplated under article 53 (1) of *the Constitution*. The focus had to be on the child and what was best for the child.

There was no hierarchy in the children’s rights provided for under *the Constitution*. All the rights provided under article 53 were in the child’s best interest. The ‘best interests’ concept was further strengthened by being the paramount consideration. The best interests of the child were to be the determining factor when deciding on the child. It was against that aspect that parental rights ought to be balanced. No right should be compromised by a negative interpretation of a child’s best interest.....

.....The concept of the child’s best interest was flexible and adaptable. It should be adapted and defined on an individual basis, according to the specific situation of the child concerned, considering their personal context, situation, and needs.

Parental rights did not trump the best interests of the child. However, parental rights could not be ignored if they were in the best interests of the child. The concept of the child’s best interests was aimed at ensuring both the full and effective enjoyment of all the children’s rights recognized in *the Constitution*, the *Children Act*, the CRC, and the African Charter on the Rights and Welfare of the Child. They were all geared towards the holistic development of the child.

Courts, while making a decision that would impact the child, were mandated to consider all circumstances affecting the child. The following guidelines ought to be considered when balancing a child’s best interests and parental rights and responsibilities:

- i. The existence of a PRA between the parties.
- ii. The past performance of each parent.
- iii. Each parent’s presence, including his or her ability to guide the child and provide for the child's overall well-being.
- iv. The ascertainable wishes of a child who was capable of giving/expressing his/her opinion.
- v. The financial status of each parent.
- vi. The individual needs of each child.
- vii. The quality of the available home environment.



- viii. Need to preserve personal relations and direct contact with the child by both parents unless it was not in the child's best interests, in which case supervised access to the child was to be granted.
- ix. Need to ensure that children were not placed in alternative care unnecessarily.
- x. The mental health of the parents.
- xi. The totality of the circumstances.

It was never in a child's best interest when the parents were engaged in a protracted court battle. Court battles relating to children were more often than not very selfish, and it was easy to overlook the psychological and mental harm done to the child in the process.....”

- 23. In the present case, the Appellant had earlier filed a Notice of Motion Application dated 9<sup>th</sup> January 2025 where he claimed that the Respondent had kidnapped their children from their matrimonial home and taken them away from their school. He sought among others, an order to avail the minors before the trial court. The trial court heard the parties on 29<sup>th</sup> January 2025 and directed that it would hear the minors in camera. Upon hearing the minors in camera, the court ruled that the minors would remain in the Respondent's custody.
- 24. In its Ruling dated 5<sup>th</sup> February 2025, the trial court dismissed the Appellant's Notice of Motion Application dated 9<sup>th</sup> January 2025 and further directed that a Children's Officer's Report be filed. The same was filed on 18<sup>th</sup> March 2025. The trial court also granted the Appellant visitation rights
- 25. Regarding the present Appeal, the Appellant contended that the minors were sickly and wanted them to be availed at Tenwek Hospital for specialized treatment and wanted an order effecting the minors' transfer from Olkaria Academy to [particulars withheld] Township Academy. The Appellant stated that the minors living and school conditions were connected to their sickness.
- 26. To prove his assertions, the Appellant attached hospital receipts as “WKK-2” as proof of the minors' sickness. In my view, the receipts tendered as evidence was evidence of purchase of medicine. To prove that the minors were sick and were treated, the Appellant ought to have produced comprehensive Medical Reports for the minors. In the circumstances thereof, the receipts were insufficient evidence.
- 27. The Appellant also attached photographs showing the minors' school and another one showing an open filed with litter. The Appellant alleged that the environment surrounding the school and their home contributed to the minors' sickness. In my view, for the Appellant to back up this allegation, he needed to provide a nexus between the school and home environments and the minors' sickness through a professional report. He did not. The Appellant's allegation was pure conjecture and was not based on any professional report or opinion.
- 28. Further to the above, a Children's Officer's Report dated 14<sup>th</sup> March 2025 was filed in the trial court. I have looked at it and it stated that the minors' teacher confirmed that the minors were in good health and they never skipped school. The report further indicated that the minors had a suitable home environment. I will rely on the findings of the Children's Officer's Report dated 14<sup>th</sup> March 2025.
- 29. Flowing from the above, it is my finding that the Appellant did not prove that the minors were neither unwell nor were they suffering from a toxic environment both at home or at school. I agree with the trial court's findings that both parents shared parental responsibility equally.

PARA 30.



In the end, there is no reason for this court to interfere with the trial court's Ruling dated 28<sup>th</sup> May 2025. The Appeal dated 30<sup>th</sup> May 2025 has no merit and is dismissed. This being a children's matter, there will be no orders as to costs.

**JUDGMENT DELIVERED, DATED AND SIGNED AT BOMET THIS 5<sup>TH</sup> DAY OF MAY, 2026.**

.....

**HON. JULIUS K. NG'ARNG'AR**

**JUDGE**

Judgment Delivered in the presence of;

Susan/Siele Court Assistant

Chemutai for Respondent

Appellant – N/A

