



REPUBLIC OF KENYA



**SK v GNK (Civil Appeal E063 of 2023) [2025] KEHC 11259 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11259 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BOMET  
CIVIL APPEAL E063 OF 2023  
JK NG'ARNG'AR, J  
JULY 31, 2025**

**BETWEEN**

**SK ..... APPELLANT**

**AND**

**GNK ..... RESPONDENT**

*(Being an Appeal from the Judgment of Senior Principal Magistrate,  
Kwambai T.K. at the Senior Principal Magistrate's Court at  
Sotik, Separation and Maintenance Cause Number 4 of 2009)*

**JUDGMENT**

1. This has been a case that has involved the maintenance of the parties' children and it has dragged on in the courts since the year 2009.
2. After numerous Applications by both parties in the trial court, the Respondent through a Notice of Motion Application dated 26<sup>th</sup> September 2023 sought an order to reinstate Warrants of Attachment issued on 26<sup>th</sup> June 2023 for the sum of Kshs 3,291,138/= against the Appellant. It was an amount that the Appellant had allegedly defaulted as maintenance and upkeep for their children.
3. In its impugned Ruling dated 21<sup>st</sup> November 2023, the trial court ruled in favour of the Respondent and reinstated the said Warrants of Attachment.
4. Being aggrieved with this Ruling, the Appellant appealed against the Ruling vide his Memorandum of Appeal dated 6<sup>th</sup> December 2023. The Appellant was specifically aggrieved by the trial court's decision to lift the Warrants of Attachment for the amount of Kshs 3,291,138/= an amount he claimed was unsubstantiated. The court shall consider this alongside other grounds listed in his Appeal.
5. 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.



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

#### **The Respondent's/Plaintiff's case.**

7. Through her Notice of Motion Application dated 26<sup>th</sup> September 2023, the Respondent sought review orders against the trial court's earlier Ruling dated 12<sup>th</sup> September 2023 which recalled Warrants of Attachment against the Appellant.
8. It was the Respondent's case that the Appellant had failed to comply with the court's orders of 50:50 share of parental responsibility. That the trial court ordered that the Appellant's salary be attached as part of covering the maintenance of their two issues. It was the Respondent's further case that she had spent Kshs 6,723,276/= from 9<sup>th</sup> November 2022 and that the Respondent had only paid Kshs 70,000/= . That according to the 50:50 parental responsibility, the Appellant ought to pay Kshs 3,361,638/=.
9. Through her written submissions dated 25<sup>th</sup> November 2024, the Respondent submitted that together with the Appellant, they are blessed with two issues namely An Chepngetich and Joshua Kiplangat and that the Appellant was intent on escaping parental responsibility.
10. It was the Respondent's submission that the Appellant had failed to comply with the Ruling dated 9<sup>th</sup> November 2022. That the orders dated 26<sup>th</sup> June 2023 directed that a 1/3 of the Appellant's salary be attached for the recovery of Kshs 2,907,920.50/=.
11. The Respondent submitted that the Appellant failed to comply with the orders of the trial court and was trying to delay justice. That the Appeal was made in bad faith as the Appellant knew that their children are students entirely depended on them for provision. The Respondent further submitted that the Appellant was capable of providing for their children.

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

12. Through his Replying Affidavit dated 9<sup>th</sup> October 2023, the Appellant stated that he had not defaulted on the maintenance of his two children to the tune of Kshs 3,291,138/=. That the said amount were false exaggerations as the receipts she relied on were forgeries. The Appellant further stated that as per the Maintenance Order dated 30<sup>th</sup> August 2012, house rent, electricity, water and miscellaneous items in the Respondent's house were not to be shared equally and that the Respondent had no legal basis to claim them.
13. It was the Appellant's case that the Respondent disobeyed the court's order dated 9<sup>th</sup> November 2022 by claiming attachment of a 1/3 of his salary for Ann Chepngetich as she had attained the age of majority.
14. It was the Appellant's case that he had not entered into any agreement to reimburse the Respondent any monies. That the Respondent had not annexed any proof of any expenditure and wanted to exploit him financially and abuse the court process. It was the Appellant's further case that there were no sufficient reasons for the trial court to review its Ruling dated 12<sup>th</sup> September 2023 since the Respondent's claim was fictitious.
15. The Appellant stated that the Respondent was in breach of the Maintenance Order dated 30<sup>th</sup> August 2012 by seeking execution orders for house rent, electricity, water bills and other miscellaneous expenses. That there was no decree that awarded the Respondent the liquidated sum of Kshs 2,907,920.50/=. The Appellant further stated that the Respondent had failed to account for the Kshs 7,000/= he pays monthly and that had accumulated to Kshs 952,000/=.



16. Through his submissions and supplementary submissions dated 13<sup>th</sup> November 2024 and 11<sup>th</sup> April 2025, the Appellant submitted that the Warrants of Attachment dated 22<sup>nd</sup> November 2023 were issued to the Respondent and that he had not been served and neither were the Warrants present in the court file. The Appellant further submitted that the Ruling dated 9<sup>th</sup> November 2022 did not mention the Kshs 2,907,920/= that the Respondent claimed. That the Respondent had failed to prove that the amount of Kshs 2,907,920/= was indicated in the Ruling dated 9<sup>th</sup> November 2022 and in the impugned Ruling dated 21<sup>st</sup> November 2023 and as such, the Warrants of Attachment ought to be quashed. He relied on section 107 of the Evidence Act and Order 21 Rule 7 of the Civil Procedure Rules.
17. It was the Appellant's submission that he had made payments totalling to Kshs 1,338,550/= and proved it by filing receipts in court and had satisfied his payments in accordance to the Ruling dated 9<sup>th</sup> November 2022. That the execution of the Ruling dated 9<sup>th</sup> November 2022 should be guided by the Maintenance Order dated 30<sup>th</sup> August 2012. It was the Appellant's further submission that the Ruling dated 9<sup>th</sup> November 2022 had an expiry clause and was not supposed to be executed in perpetuity.
18. The Appellant submitted that their children had attained the age of majority and no determination had been made on the Respondent's application for extension of parental responsibility. He relied on section 116 (2) of the Children's Act, 2022.
19. I have gone through the trial court proceedings, the Record of Appeal dated 29<sup>th</sup> April 2024, the Appellant's written submissions and supplementary submissions dated 13<sup>th</sup> November 2024 and 11<sup>th</sup> April 2025 respectively and the Respondent's written submissions dated 25<sup>th</sup> November 2024. The only issue for my determination was whether the trial court erred when it reinstated Warrants of Attachment against the Appellant.
20. The Appellant faulted the trial court's decision to review its Ruling dated 12<sup>th</sup> September 2023.
21. The law on review is based on section 80 of the Civil procedure Act and Order 45 Rule 1 of the Civil Procedure Rules, 2010. Section 80 of the Civil Procedure Act provides as follows: -  
Any person who considers himself aggrieved-
  - (a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
  - (b) by a decree or order from which no appeal is allowed by this Act,May apply for a review of judgement to the court, which passed the decree or made the order, and the court may make such order thereon as it thinks fit.
22. Order 45 Rule 1 of the Civil Procedure Rules, 2010 provides as follows: -
  - (1) Any person considering himself aggrieved-
    - (a) By a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
    - (b) By a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain



a review of the decree or order, may apply for review of judgement to the court which passed the decree or made the order without unreasonable delay.

23. From the above provisions, it is clear that section 80 of the Civil Procedure Act gives the power of review while Order 45 of the Civil Procedure Rules 2010, sets out the rules. The rules limit the grounds applicable for Review as follows: -
- i. The discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the Applicant or could not be produced by him at the time when the Decree was passed or the Order made.
  - ii. On account of some mistake or error apparent on the face of the record.
  - iii. Any other sufficient reason and that the Application has to be made without unreasonable delay.
24. The Court of Appeal in *Tokesi Mambili and others vs Simion Litsanga (2004) eKLR* held: -
- i. In order to obtain a review an applicant has to show to the satisfaction of the court that there has been discovery of new and important matter or evidence which was not within his knowledge or could not be produced at the time when the order to be reviewed was made. An applicant may have to show that there was a mistake or error apparent on the face of the record or for any other sufficient reason.
  - ii. Where the application is based on sufficient reason it is for the Court to exercise its discretion.”
25. I have carefully gone through the Ruling dated 9<sup>th</sup> November 2022. The Ruling stated that the Appellant was to provide 50% maintenance to the issues until they attained the age of majority. That the 50% contribution would be less Kshs 70,500/= that the Appellant had already paid up. The Ruling further gave the Appellant a timeline of one (1) year to pay up the arrears failure to which the same would be extracted from his salary.
26. I have also looked at the Warrants of Attachment issued on 26<sup>th</sup> June 2023. The Warrants directed the Appellant’s employer to attach a 1/3 of his salary to recover the sum of Kshs 2,907,920.50/=.
27. In recalling the Warrants, the trial court through its Ruling dated 12<sup>th</sup> September 2023, correctly noted that the Ruling dated 9<sup>th</sup> November 2022 had not quantified the amount that the Appellant owed and ought to be attached. In reviewing its Ruling dated 12<sup>th</sup> September 2023, the trial court through its impugned Ruling dated 21<sup>st</sup> November 2023 stated that its basis for reviewing its earlier Ruling was that the order for attachment of salary had not been appealed.
28. I have looked at the order dated 9<sup>th</sup> November 2022. For purposes of clarity, I will reproduce the order hereunder: -
- “ THAT it is and hereby ordered that the Defendant/Respondent’s 1/3 salary through his Personal Service Number \*\*, **National Housing Corporation be attached and remitted to the Plaintiff’s Account Number \*\*\*\*\***, **Equity Bank-Litein Branch in the name of \*\***”
29. From the above, it is clear that the Ruling and subsequent order dated 9<sup>th</sup> November 2022 did not quantify the amount that was due and owing by the Appellant as maintenance. Further, in its



impugned Ruling dated 21<sup>st</sup> November 2023, the trial court also failed to mention or indicate the amount owed by the Appellant. In as much as the court appreciated that execution was a different process altogether, justice dictated that the Judgement Debtor (Appellant) be aware of the amount they owe. It is the view of this court that the amount of Kshs 2,907,920.50/= surfacing in the Warrants was an ambush. It is also salient to note that the aforementioned amount was disputed by the Appellant.

30. In light of the conditions for review stipulated above, there was no evidence of an error that was apparent on the face of the record or any sufficient reason demonstrated for the Ruling to be reviewed. Further, there was also no evidence that the trial court had discovered new material or an important matter which after the exercise of due diligence, was not within the knowledge of the Applicant.
31. The sum total of the above is that the trial court erred in reviewing its Ruling dated 12<sup>th</sup> September 2023 reinstating the Warrants of Attachment issued on 23<sup>rd</sup> June 2023.
32. I however agree that this is a children's matter and their interests are of significant importance. Article 53(2) of *the Constitution* of Kenya which provides: -  
A child's best interests are of paramount importance in every matter concerning the child.
33. Section 4(2) of the Children's Act provides: -  
In all actions concerning the children, whether undertaken by public or private or social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
34. The court in JKN v MNN [2023] KEHC 1021 (KLR) held: -  
“,..... Essentially, the rights of the children override the rights of the applicant.....”
35. It is clear from the above that the children's interests in this case are more important than the Appellant and Respondent's grievances. In the interest of justice, I make the following orders: -
  - I. The Appeal dated 6<sup>th</sup> December 2023 is allowed.
  - II. The Warrants of Attachment issued on 23<sup>rd</sup> June 2023 and all other subsequent Warrants of Attachment are hereby quashed.
  - III. The matter is referred back to the trial court for a proper determination as to the amounts owing (if any) in maintenance.
  - IV. Each party to bear their own costs.

**JUDGEMENT DELIVERED, DATED AND SIGNED AT BOMET THIS 31<sup>ST</sup> DAY OF JULY, 2025.**

.....

**J.K.NG'ARNG'AR**

**JUDGE**

**Judgement delivered in the presence of Simon Kirui for the Appellant, No Appearance for the Respondent. Siele and Susan (Court Assistants).**

