



REPUBLIC OF KENYA



**In re R.S.C & P.S.K.C. (Minors) (Succession Cause E010 of 2020)  
[2022] KEHC 11971 (KLR) (Family) (23 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 11971 (KLR)

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

**FAMILY**

**SUCCESSION CAUSE E010 OF 2020**

**AO MUCHELULE, J**

**JUNE 23, 2022**

**IN THE MATTER OF R.S.C AND P.S.K.C. (MINORS)**

**K.S.C.....APPLICANT**

**VERSUS**

**J.K.P.....RESPONDENT**

**RULING**

1. The applicant K.S.C. is a British citizen and the respondent J.K.P. is an Australian citizen. On 16<sup>th</sup> June 2012 they got married in the United Kingdom, and thereafter moved to Kenya where the applicant gained employment in November 2006.
2. The marriage was blessed with two children:-
  - a. R.C., male 8 years old, born in the United Kingdom; and
  - b. female 4 years old, born in Kenya.
3. The couple is currently separated. The respondent has initiated divorce proceedings in the United Kingdom while the applicant has initiated divorce proceedings in Kenya.
4. The applicant claimed that the respondent relocated with the minors to the United Kingdom without his consent sometimes in March 2020. He filed proceedings in the High Court in England seeking the return of the minors. The respondent contested the proceedings. The parties signed a consent which was adopted on 11<sup>th</sup> September 2020 by the English High Court as order of the court. Following the return of the parties and the minors in Kenya the parties signed a mediation agreement which mirrored the agreement signed in the United Kingdom. The agreement was adopted as order by the High Court Kenya on 17<sup>th</sup> September 2020. As per the terms of the consent order, the parties undertook mediation proceedings and signed the mediation agreement dated 14<sup>th</sup> October 2020 to cement their parental rights and responsibilities towards the minors in Kenya.



5. There is no dispute that the applicant filed Milimani C.M. Children Cause No. E518 of 2021 against the respondent seeking to access the children as well as to secure their education. The children had been enrolled at [particulars withheld] Preparatory School and at [particulars withheld] School Muthaiga, respectively. The respondent filed a defence and counterclaim seeking to remove the children from the jurisdiction of the court to the United Kingdom where she had found schools for them.
6. There is a notice of motion dated 23 August 2021 filed by the applicant in which he seeks the following orders against the respondent:-
  - “ 1) This application be certified urgent, service thereof be dispensed with and the same be heard ex parte in the first instance;
  - 2) Pending the hearing and determination of this application, an order be issued staying all proceedings in Milimani Magistrate Children’s Case No. E518 of 2021 – K.S.C. –v- J.K.P;
  - 3) An order be issued to the respondent, J.K.P. to show cause why she would not be punished for contempt of court for willfully disobeying the orders of this court given on 17<sup>th</sup> September 2020;
  - 4) An order be issued citing J.K.P. for contempt of this court’s order given on 17<sup>th</sup> September 2020;
  - 5) An order be issued directing the respondent, J.K.P. to pay a fine of Kenya shillings One Hundred Thousand as a penalty for being in contempt of court by willfully disobeying the orders of this court given on 17<sup>th</sup> September 2020; and
  - 6) The costs of this application be borne by the respondent in any event.”
7. The applicant’s complaint is that in the consent order that they recorded before this court, the respondent had undertaken not to change the minors’ schools without his written consent. He stated that the respondent had gone against the order by securing schools for the minors in the United Kingdom without reference to him. This action, he stated, was contemptuous of the consent order. It was because of the alleged contempt that the applicant asked that the proceedings before the Children Court be stayed to allow for the hearing and resolution of the present application. He did not want the respondent to be afforded a hearing in the pending matter before the Children Court as, according to him, a person in contempt of a court order should not be given a hearing.
8. The respondent denied that she was in contempt. In her replying affidavit sworn on 6<sup>th</sup> December 2021, she explained that in March 2020 she, the applicant and the minors, travelled to the United Kingdom. The older child was to see a doctor and she was to visit her expectant sister. In March 2020 Covid-19 struck. There were public health mandatory quarantines effected both in Kenya and in the United Kingdom. The applicant opted to return to Kenya despite her advice that he should not. He returned on 16<sup>th</sup> March 2020. She intended to travel to Kenya with the children on 30<sup>th</sup> March 2020 but the restrictions could not allow it. The applicant agreed that they stay behind. She eventually filed her divorce cause and the applicant, in retaliation, filed his divorce cause in Kenya. This was followed by the proceedings that led to the consent order in England which were adopted in Kenya. In the meantime, the respondent got a job in the United Kingdom. She filed an application dated 7<sup>th</sup> May 2021 before this court seeking to be allowed to take the children and live with them in the United Kingdom for them to attend schools she had secured for them. The application was opposed through the applicant’s



replying affidavit sworn on 30<sup>th</sup> June 2021. According to the respondent, she has secured the schools, and she always kept the applicant in the picture and had invited the applicant to participate in their identification but the latter had declined. According to her, the moving of the children for education in the United Kingdom is in their best interests. The application is pending hearing and resolution.

9. This is what the respondent has deponed in paragraphs 19, 20, 21 and 22 of her replying affidavit sworn on 6<sup>th</sup> December 2021:-

“ 19) That the applicant’s assertions that I have acted unilaterally are false and unfounded as I have previously extended invites to the applicant to the relevant virtual open days so that he can review the schools as well in the hope that we could come to an amicable agreement pending the final orders of the court;

20) That by the applicant’s own admission, he refused to cooperate and engage with me in looking into schools in the UK for the minor. All my efforts to seek his involvement and consent have been met with rudeness, dismissal and apathy. The applicant has completely refused to be involved in any conversations about schooling in the UK and it is thus unjust for him to claim that I acted in exclusion; and

21) That Further, I have not at any time changed the minor’s schools nor have I enrolled them in the schools in the UK or elsewhere. I only secured holding positions or placed the children on waitlists for the minors in the event that my relocation application is granted and made full disclosures to the Children’s Court (and to the plaintiff) where I have a counter claim seeking orders to live with the minors in the UK.”

10. The applicant opposed the respondent’s effort to relocate the minors for school in the United Kingdom where they do not have a home. He states that such relocation would be a violation of the minors’ rights under the *Children Act*.
11. It is evident that both before this court and in the children court, the respondent is seeking permission to relocate the minor to schools she has identified in the United Kingdom. She wanted the applicant to participate in the identification of the schools but he declined. He is opposed to any such relocation of the minors. The respondent states that she identified the schools so that if her request to relocate the minors is accepted they will have ready schools. The applicant agrees that the respondent contacted him to help in the identification of the schools, but that he was from day one opposed to such attempts to relocate the minors. He further claimed that such contact was, in any case, cosmetic and perfunctory.
12. The respondent is confronted with the situation where she has got a job in the United Kingdom at the time when she was there lawfully with the minors, and is seeking the court’s permission to allow the formal relocation. She has, in the meantime, identified the schools. If the court were to stay the proceedings in the Children Court, that will deny the respondent the opportunity to persuade the court that what she is seeking to do will benefit the minors and will be in their best interests. I bear in mind that stay of proceedings is a serious, grave and fundamental interruption of the right that a party has to conduct his litigation towards the trial on the basis of substantive merits of his case, and therefore the court’s general practice is that such stay should not be granted unless the proceedings beyond all reasonable doubt ought not be allowed to continue (*Kenya Wildlife Service -v- James Mutembei* [2019]eKLR). The power of staying proceedings ought to be exercised sparingly, and only in exceptional cases. It will be exercised where the proceedings are shown to be frivolous, vexatious, or harassing or to be manifestly groundless, or in which there is clearly no cause of action in law or in equity.



13. Both before this court and before the Children Court, the respondent is seeking to vary the consent orders that the parties signed given that she has since secured employment in the United Kingdom and wants the minors to school in the United Kingdom. This court cannot estimate the chances that the respondent shall have in this endeavor. What is clear is that, and this is the finding of this court, the facts do not show that the respondent has so far breached any of the terms of the consent orders that were recorded between her and the applicant.
14. The application is consequently dismissed with costs.

**DATED AND DELIVERED AT NAIROBI THIS 23<sup>RD</sup> DAY OF JUNE 2022**

**A.O. MUCHELULE**

**JUDGE**

