



MMG (suing as the mother and next friend of PMK, TA, FB, DK and EM) v TO (Children's Appeal Case E005 of 2021) [2022] KEHC 16537 (KLR) (19 December 2022) (Ruling)

Neutral citation: [2022] KEHC 16537 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CHILDREN'S APPEAL CASE E005 OF 2021
TM MATHEKA, J
DECEMBER 19, 2022**

BETWEEN

MMG (SUING AS THE MOTHER AND NEXT FRIEND OF PMK, TA, FB, DK AND EM) APPELLANT

AND

TO RESPONDENT

RULING

1. The application before me is the one dated October 21, 2022 seeing the order that the subject DK be transferred to [particulars withheld] Academy from [particulars withheld] Academy.
2. The application is supported by the Affidavit of T O, the father of DK who is the respondent/applicant and the grounds on its face mainly that the subject and her siblings have grown together and have been schooling at [particulars withheld] Academy, that it is a better school, that the applicant has financial arrangements for the payment of school fees and this will enable the smooth and seamless access and custody of the subjects during school holidays.
3. The applicant depones that it is the respondent who caused the problem because in 2021 she illegally transferred the subjects to the other school, that the fact that DK is in a different school is causing him financial strain, and also affecting his access to the child.
4. The application is opposed by the mother, the respondent. Her position is that the applicant is not acting in the best interests of the child. That DK is a 9 years old and has a medical condition, suffers from convulsions. That sending her to a boarding school will not be in her best interest as it will put the burden of her care on her siblings aged 11 and 12 years. That the applicant had tried to transfer DK to the same school earlier but the Children Court had revised that decision and returned her to the respondent to continue attending school where she was.



5. The issue to be determined is whether this court should order that DK be transferred from her current school to the school where her siblings attend.
6. The main reason for the request is for her to attend the same school as her siblings, that she feels discriminated because her siblings attend the better school. However other than the applicant's word, there is nothing on record before me to show that DK actually feels that her school is inferior and therefore she is being discriminated against.
7. The applicant has not disputed the fact that the child DK has a medical condition that would not be conducive to being in a boarding school. In any event, a 9-year-old, is too young to be in a boarding school when there is a parent willing to take care of the child while attending a day school.
8. The applicant argues that being in different schools creates challenges on access and custody over the holidays, but there is on record this court's clear directions on how that should happen so that the children can spend equal time together. Any parent who violates the direction on the access by the minor of both her siblings and the other parent will risk losing those rights if it is demonstrated that that is done willfully.
9. It is only fair that the parents objectively seek the views of their child before they make these applications and make this available to the court. The views of the child ought to be heard as well without influence from either side as to what she wants.
10. This court is bound to act in the best interests of the child on the basis of the facts before it, and in the circumstance placed before me. The child is too young to go to boarding school. The child has a medical condition that would not allow her to be comfortable in boarding school. The issue of school fees can be sorted out with the school. The voice of the child has not been captured and until I hear from her, the application is denied.
11. The children officer to interview the subject on this issue and place the report in the file on or before January 17, 2023.
12. Order be served upon the Children Officer for compliance.
13. Orders accordingly.

DATED SIGNED AND DELIVERED THIS 19TH DAY OF DECEMBER 2022.

Mumbua T. Matheka

Judge

C/A Edna-

Mr. Kibet for applicant

Mr. Ouma for respondent

