



**IMM v JKK (Miscellaneous Application E094 of 2022)
[2022] KEHC 16433 (KLR) (Family) (16 December 2022) (Ruling)**

Neutral citation: [2022] KEHC 16433 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MISCELLANEOUS APPLICATION E094 OF 2022
MA ODERO, J
DECEMBER 16, 2022**

BETWEEN

IMM APPLICANT

AND

JKK RESPONDENT

RULING

1. Before this court is the notice of motion dated May 9, 2022 by which the applicant IMM seeks the following orders:-
 1. Spent.
 2. Spent
 3. That pending the hearing and determination of this application *exparte*, the honourable court be and is hereby pleased to transfer Meru Children’s Case No E022 of 2022 to the Milimani Chief Magistrate’s Court.
 4. That pending the hearing and determination of this application *exparte*, the honourable court be and is hereby pleased to maintain the *status quo* of the custody of the minors XB and SM to be with the applicant.
 5. That pending the hearing and determination of this application *exparte*, the honourable court be and is hereby pleased to maintain the *status quo* of the schooling of the minor XB at the current school in Nairobi.
 6. Costs of the application be borne by the respondent



7. That the court do make such or further orders as it may deem fair and just in the interest of justice and in the best interest of the children.”
2. The application which was premised upon order 51, rule 1 *Civil Procedure Rules*, section 18 of the *Civil Procedure Act* cap 21 laws of Kenya and all other enabling provisions of the law was supported by the affidavit of even date sworn by the applicant.
3. The respondent JKK opposed the application through his replying affidavit dated May 13, 2022. The application was canvassed by way of written submissions. The applicant filed the written submissions dated June 14, 2022 whilst the respondent relied upon the written submissions dated July 15, 2022.

Background

4. The applicant and the respondent are the biological parents to the two (2) subject minors ‘XB’ and ‘SM’. The couple initially resided in [particulars withheld] in Nairobi. Sometime in April 2022, the applicant left the matrimonial home taking the two minors with her. The respondent then filed at the Meru Childrens Court Suit No E022 of 2022 seeking *inter alia* custody of the minors.
5. The applicant filed this application seeking to have the suit filed in Meru transferred to the Nairobi Children Court for hearing and determination. She submits that both she and the minors reside in Nairobi and that the minor ‘XB’ has been admitted at [particulars withheld] which is located in Nairobi. That having the suit heard at the Meru Children Court will be inconvenient and oppressive to the minors and may interfere with the schooling of one of the minors.
6. On his part the respondent admits that he got married to the applicant in the year 2019 under customary law and that their union was blessed with two (2) children.
7. The respondent states that the family originally resided in Athi River where he conducted business. However, the Covid-19 pandemic negatively affected his business and in consultation with the applicant the couple agreed to relocate back to Meru.
8. The respondent states that on April 8, 2022 he returned home to find that the applicant had deserted the family home and taken the children with her. He alleges that the applicant has obtained passports for the minors and intends to take them out of the country.
9. The respondent urges that the present application has been filed with the sole aim of circumventing the orders made in the Meru Childrens Court directing that the minors be produced in the court. He urges the court not to stay the proceedings in the Meru Court and prays that the entire application be dismissed.

Analysis and Determination

10. I have considered the application filed in this court, the reply filed thereto as well as the written submissions filed by both parties. The only issue for determination is whether the suit filed in the Meru Childrens Court should be transferred to the Nairobi Children Court.
11. Section 18(1) of the *Civil Procedure Act* provides as follows:-
 - “(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage—



- (a) Transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or
- (b) Withdraw any suit or other proceeding pending in any court subordinate to it, and thereafter—
 - (i) try or dispose of the same; or
 - (ii) transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or
 - (iii) retransfer the same for trial or disposal to the court from which it was withdrawn.”

12. The applicant submits that since she and the minors reside in Nairobi the suit ought to be transferred to the Nairobi Childrens Court.
13. The substantive law governing the hearing of matters filed in the Magistrates Courts is the *Magistrates Courts Act* cap 10, laws of Kenya. Section 3(2) of that Act gives Magistrates Courts countrywide jurisdiction to hear and determine any suit notwithstanding where the defendant resides or where the cause of action arose. As such, the Childrens Courts have countrywide jurisdiction
14. It is a fact that following the Covid-19 pandemic courts in this country have embraced virtual or online hearings. A party may attend court from any location even from foreign countries. Therefore, the filing of the suit in Meru cannot be said to be an inconvenience as the applicant may not be required to travel physically to Meru. She can request that she and the children attend court virtually.
15. This court cannot ignore the sheer volume of work facing the Nairobi Childrens Court by virtue of its location in the capital city which has a high population. To have cases transferred to Nairobi would unnecessarily burden the Nairobi Court. Further, the case is likely to be determined faster in Meru which can only be beneficial to all the parties. [See *Re Estate of Rnm* [2020] eKLR]
16. The case filed in Meru involves minors. The court is obliged to give priority to the best interest of the child. It is in the best interests of the two minors to have this matter determined in the shortest possible time. I fail to see how transferring the suit to Nairobi will promote the best interest of the minors.
17. In conclusion, I find no merit in this application. The same is dismissed in its entirety. This being a family matter each side will bear its own costs.

DATED IN NAIROBI THIS 16TH DAY OF DECEMBER, 2022.

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MAUREEN A. ODERO
JUDGE

