



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

(CORAM: CHERERE-J)

DIVORCE CAUSE NO.1 OF 2019

BETWEEN

GDM.....PLAINTIFF/RESPONDENT

AND

CMM.....RESPONDENT/APPLICANT

RULING

1. By a notice of motion dated 19th April, 2021, Respondent/Applicant prays for orders that the court be pleased to order for a DNA test on RGM to determine if he is the son of the Applicant.
2. The summons is supported by an affidavit sworn by the Applicant on 19th April, 2021 in which he reiterates the grounds on the face of the application.
3. The application is opposed on the basis of a replying affidavit sworn by the respondent on 19th July, 2021 mainly on the ground that the issue of paternity is immaterial to the orders sought in the petition for divorce.

Analysis and Determination

4. I have considered the notice of motion in the light of affidavits on record and submissions filed on behalf of both parties
5. As appreciated by Ngaah, J in **FKW (suing as the mother and next friend of GDW (Minor) vs. DMM [2015] eKLR:**

“..... where it is in the best interests of the child that a paternity test should be undertaken; where there is no other means of determining the father of a child other than by means of a paternity test and therefore where such a test is necessary in the circumstances and, where, in any event, the applicant has made out a prima facie case for such a test, then a court of law will ordinarily make an order for such a test.

6. From the foregoing, it is apparent that the court is empowered to direct parties before it to undergo DNA test and there is nothing unconstitutional about that power in appropriate cases.
7. The pleading before the court disclose that paternity of the parties’ children is not one of the issues for determination.
8. Consequently, I have come to the conclusion that the application to subject RGM to DNA will not *serve any meaningful purpose in aiding the court to reach an informed decision in determining the issues in dispute.*
9. In the end, the notice of motion dated 19th April, 2021 is considered and found to have no merit. The same is dismissed with costs to the Plaintiff/Respondent.

DATED IN MERU THIS 16TH DAY OF DECEMBER, 2021

T.W. CHERERE

JUDGE

Appearances

Court Assistant - Morris Kinoti

For Respondent /Applicant - Ms.Kinyua hb for Mr. Thuku for Kivuva Omuga & Co Advocates

For Plaintiff /Respondent - Mr.Kirimi for Kinyanjui, Kirimi & Co Advocates