

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

CIVIL APPEAL NO. 36 OF 2019

JA.....APPELLANT

VERSUS

AA.....RESPONDENT

RULING ON CONTEMPT OF COURT

1. I have considered the mitigating affidavit by the Appellant in the contempt matter before the court and the Response by Mr. Qeu counsel for the Respondent.
2. It is clear on record that on 31/7/2019 the trial court granted sole custody of F.O a child, to the Respondent and if the Appellant was approached by the child on account of need of care and protection, he should have sought advice from his legal counsel which from the appearance of these proceedings, he did not. Instead, he went to the Children's Officer who, instead of applying to court under Section 120 of the Children's Act for variation of Orders of 31/7/2019 on account that the child was in need of care and protection, the Children's officer allowed the appellant to have full custody of the child F.O.
3. That notwithstanding, I note that from annexure JA4, the Appellant did communicate to the Respondent on 20/10/2020 that he was with the child, and therefore it is not true to say that he abducted the child and or that the whereabouts of the child were unknown. There is also evidence of the appellant and the child doing shopping together meaning the child was in custody of the appellant albeit contrary to the orders of the trial court.
4. Having said all that I find that the appellant was in contempt of court orders of 31/7/2019 on custody of the child F.O. However, he was misled by the Children's officer to keep custody of the child instead of seeking for orders on a child who was in need of care and protection.
5. I therefore proceed to discharge the appellant with a warning not to disregard court orders in future.
6. Orders accordingly.

Dated, signed and delivered at Siaya this 25th Day of November 2020

R.E. ABURULI

JUDGE