



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

MISCELLANEOUS CIVIL APPLICATION NO. 73 OF 2014

I S N (a minor suing through E N N).....APPLICANT

VERSUS

ISAAC WANYONYI MASINDE.....RESPONDENT

RULING

By a motion dated 1st October, 2014, expressed to be brought under section 18 of the Civil Procedure Act and article 53 (2) of the Constitution, the applicant sought to stay the proceedings in **Mukurweini Senior Principal Magistrates' Court Children Case No. 3 of 2014 pending the determination of this application**; she also sought to have that case transferred to the Children's court at Nyeri.

The grounds upon which the application was made are that since the respondent is a deputy county commissioner in Mukurweini Sub County, justice will be best served if the case is determined in a court that is not within the respondent's area of jurisdiction; that owing to his position in Government, the respondent influenced the making of the report in respect of the subject child and which report was compiled and filed in court by Mukurweini Sub County Children's Office; and that owing to his position in Government, the respondent interacts regularly with other government offices within Mukurweini Sub County and therefore justice will not be served if the suit is heard in Mukurweini Principal Magistrates' Court.

These grounds have been expounded in the affidavit in support of the motion sworn by the applicant herself on 1st October, 2014.

The respondent opposed the application and filed a replying affidavit in that regard; in it, he discounted the applicant's claims and more particularly denied having anything to do with the report from the District Children's Office at Mukurweini.

Both parties filed written submissions in support of and in opposition to the application. I have duly considered the rival submissions together with the parties respective affidavits and come to the conclusion that the application has no basis for the reasons which I will give herein below.

The suit was filed by the applicant herself and in her plaint filed in court on 25th April, 2014, she acknowledged the jurisdiction of the magistrates' court at Mukurweini. From the pleadings filed by both parties in that court, it appears that the child in issue was born while both the applicant and the respondent

were working for gain in government offices at Mukurweini and in particular the respondent was holding the senior position whose influence the applicant appears to be scared of.

It is thus clear that the circumstances which the applicant fears might influence her case to her disadvantage pre-existed the institution of this suit and were well within the knowledge of the applicant herself; it smacks of bad faith for her to turn around and complain that the suit which she filed herself in the magistrates court will not be determined fairly in those circumstances.

Moreso, as much as the respondent may have administrative geographical jurisdiction over an area within which the magistrates Courts at Mukurweini fall, he does not have jurisdiction over those courts; a fortiori, the judicial officers in those courts are independent and no government officer or any other officer of whatever rank can direct them on the decisions to make in the cases that are brought before them. They have taken oath office to administer justice without, ill will, fear or favour. To claim that the courts in which they sit are within the administrative jurisdiction of the respondent and therefore they are likely to decide a particular case at the whims of an administration officer is to cast aspersions, unfairly so, on the integrity of these officers and more so on their judicial independence and oath of office.

Although the applicant has claimed that the respondent may have influenced the writing of the report in respect of the child, she has not indicated in what respects the respondent did so; as far as I understand her, her main complaint is that she was not interviewed. It may be true that she was not interviewed but the applicant has not come out clearly to say what it is that has been said of her in that report that is untrue such that if she had been interviewed she would have put the matter in its proper perspective. Again, failure to take her views by an officer who has no role whatsoever in decision making cannot be a ground for transfer of her suit from one court to another.

It must also be remembered that the report is simply a piece of evidence which, like any other evidence, is open to challenge subject, of course, to the law governing admission of evidence in a suit such as the one before the magistrate's court. If the applicant felt aggrieved by the report, she ought to have taken advantage of the means provided under the law to challenge that report and controvert whatever information that in her view, misrepresents the true state of affairs. In any event the court is not bound by that report and it may as well disregard it if it thinks there are sufficient reasons to ignore it.

In my view, the application before court has no basis and it amounts to nothing more than a means for forum shopping. I hereby dismiss it with costs.

Dated, signed and delivered in open court this 17th June, 2016

Ngaah Jairus

JUDGE