



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KERUGOYA**

**MISCELLANEOUS APPLICATION NO. 19 OF 2016**

N M N .....APPLICANT

VERSUS

S C.....1<sup>ST</sup> RESPONDENT

V C.....2<sup>ND</sup> RESPONDENT

**RULING**

1. N M N the applicant herein has moved this Court under **Section 15 (a) 18 (1) (b) (ii) and (2)** of the **Civil Procedure Act** for an order to transfer a Children's case No. 16 of 2016 pending at Nairobi Children's Court to Kerugoya Children's Court for hearing and determination. The children's case involves the Applicant herein as the defendant and S C T and V C as the plaintiffs and is about the custody of the minors known as **P F K** (aged 6 years) and **K K** (aged 3 years old).

2. The grounds upon which this application is made are as follows:

**(a) That the children's case filed at children's court Nairobi is pending.**

**(b) That the applicant is the defendant in the case and resides within Kirinyaga County where he works for gain and lives with the minors who are said to school at Karatina and so it would be fair to transfer the case from Nairobi to Kerugoya.**

3. The Respondents to this application failed to turn up in court for hearing of this application though the second respondent filed a replying affidavit to oppose the application. This Court finds that they were properly served through their counsel on 5<sup>th</sup> August, 2016 going by the affidavit of service duly filed to prove service. This being a children's case and the fact that there is an affidavit on record, I am inclined to consider the response to this application notwithstanding their absence or the absence of their counsel at the hearing of this application.

4. The 2<sup>nd</sup> respondent opposed this application through her said replying affidavit sworn on 22<sup>nd</sup> July, 2016 where she deposed that the application is defective and incompetent as the affidavit in support of the same is sworn by a stranger in the application. She further deposed that they decided to file the case in Nairobi as they considered it a central place in view of the fact that she stays in Narok while the 1<sup>st</sup> respondent stays in Kuresoi Nakuru County. It is further deposed that the Respondents had no ill-intentions in filing the case in children's court Nairobi as it was convenient for all the parties to the case. The 2<sup>nd</sup> respondent has also denied that the children reside within Kirinyaga County and has deposed that they are in Nyeri staying with an aunt unknown to them.

5. I have considered the application and the objection raised by the 2<sup>nd</sup> respondent. It is true that the affidavit in support of this application sworn on 14<sup>th</sup> July, 2016 has been sworn by one Josphat Mwangi Kamunge who is not a party to application or the children's case pending in Nairobi. The Applicant's counsel did not state whether there was a typographical error or not but even if this court was to overlook the same as a typographical error in view of the name appearing in the introductory part of the affidavit, I would still have held that this application should have been filed at the High Court in Nairobi where the children's case was filed. This is because justice must not only be done but it must be seen to be done. The jurisdiction of children's court to handle children's cases is provided under the **Children's Act** and **Section 118** of the Act does not limit the jurisdiction of the children's court to only causes that arise within the area of jurisdiction of a children's court. There is no report from a children's officer detailing where the minors are so it would be hard to know who between the applicant and the 2<sup>nd</sup> respondent is telling the truth concerning where the children are staying at the moment with a view to application of the provisions of **Section 4** of the **Children's Act** in this application.

This court therefore finds no merit in the application dated 14<sup>th</sup> July, 2016. The Applicant has the liberty to move the High Court in Nairobi if he feels prejudiced by the case being filed at Nairobi Children's court. This being a case involving children I shall not make any order as to costs.

*Dated and delivered at Kerugoya this 20<sup>th</sup> day of September, 2016.*

**R. K. LIMO**

**JUDGE**

20.9.2016

Before Hon. Justice R. K. Limo J.,

Court Assistant Nomi Murage

No appearance for Respondent.

**COURT:** Ruling dated, signed and delivered in the presence of Maina Advocate for the applicant and in the absence of the Respondent.

R. K. LIMO

**JUDGE**

20.9.2016