



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NANYUKI
CRIMINAL REVISION. NO. 23 OF 2016

L A A APPELLANT

versus

REPUBLIC..... RESPONDENT

(Revision arising from the ruling in Nanyuki Chief Magistrate's Court P & C Case No.12 of 2015 by Hon. Lucy Mutai Chief Magistrate on 12th July 2016).

RULING

1. This Ruling relates to a request for Revision by this court of the Nanyuki Chief Magistrate's Court order of 12th July 2016 in P&C file No. 12 of 2015.

2. L A A a minor child of 5 years was under the care of her aunt in Nanyuki. The minor was an orphan. The aunt was reported on two occasions 21st April and 5th May, 2015 by members of the public to the Sub-county Children's officer (SCCO) as having physically abused the minor. Following that report the minor was placed on temporary committal at a children's home called One More Day for children (OMDC) for care and protection. The minor's aunt was charged with a criminal offence related to that abuse. The Chief Magistrate's court then opened a protection and care file for the minor being P & C file No. 12 of 2015.

3. The minor has an extended family who reside in Siaya. The grandfather and grandmother approached the Chief Magistrate court seeking that the minor child be released to them.

4. Following various submissions by SCCO and by counsels for the minor and for the family of the minor the Chief Magistrate on 10th August, 2015 made the following orders.

“1. The SCCO, the family of the subject and the OMDC will come up with a care plan within an agreed time frame that will provide for the through (sic) care of the subject till exit.

2. The S C C O will liaise with his counterpart in Rarieda to prepare a home visit to support the care plan above.

3. The subject's temporally commitment to OMDC is extended to order 1 above.”

5. The matter was adjourned from time to time because the court's order of 10th August, 2015 had not been obeyed. On 12th July 2016 the Chief Magistrate court made the following orders:-

“On the 17/5/2016 the Children Officer informed the court that a home visit report together with

a Care plan report had been filed as at the courts request. That subject home assessment had been conducted and found suitable for the child and who should now be re-integrated back to her people.

I have well perused the application and save for the reports filed on the 13/7/2015 from One more Day Children, 13/7/2015 from the Children Officer, 12/7/2015 sub-chief Asembo and that of 24/11/2015 from District Children's officer. No other new report had been filed. However the child's grandparents have appeared before the court today.

I have interviewed them and they are willing to have custody of their grandchild. They are willing to take up the guardianship of the subject. There are the immediate relatives of the subject. The records shows that the subject who is being sheltered at the One More Day Children Home had acquired a sponsor up to 18 years.

I have considered so. The subject's grandparents are now willing to take such responsibility. The children officer had informed the court to their suitability to take up the subject's guardianship.

I have weighed two obvious and for the best interest of the child.”

6. It is the above order that provoked the request for Revision by this court. The Revision was requested by Learned Counsel Mr. Kiget representing OMDC and watching brief for the minor child. The revision is sought on the following grounds:

1. That the subject be released to the custody of the grandfather D O O present in court and the grandmother M J O all of Rarienda –Siaya County.

2. That the accused person is hereby restrained from any interference with the said custody of the subjects and the subject himself.

3. That the children's officer on the ground to assess the child's progress and to file quarterly report with the court.

4. That the children officer Mr. Musindayi to supervise the child's handing over to the grandparents to be done before 20/7/2016 at 5.00p.m.

5. Mention on 30/9/2016

L MUTAI

CHIEF MAGISTRATE

7. An order was made by this court on this Revision file on 14th October, 2016 requiring the Learned Counsels in this matter do appear before this court to address the court on the requested Revision. Learned Counsel Mr. Kiget and Mary Kangethe from the Office of Director of Public Prosecution were summoned and also SCCO. This court inadvertently failed to summon Mr. Abwuor for the family of the minor.

8. The main issue as I understand it raised by Mr. Kiget in his submissions is that in making that order of 12th July 2016 the Chief Magistrate failed to call for the Minor's care plan report which had been ordered by the Chief Magistrate on 10th August, 2015.

9. I have perused the whole record of the Chief Magistrate Court proceedings and the various reports thereof. The Learned Chief Magistrate before making the final order of 12th July 2016 bore the following into considerations:

(1) That the Honourable Trial Magistrate erred in failing to take into account the process of reintegration stipulated in the ruling dated and delivered on the 10th day of August, 2015 by the Honourable T. Matheka – Chief Magistrate in Nanyuki P & C Case No. 12 of 2015.

(2) That the Honourable Trial Magistrate erred and misdirected herself in issuing an undated order which did not indicate who was to release the subject and the information of the Children’s officer on the ground who was to assess the child’s progress and file quarterly report with the court.

(3) That the Honourable Trial Magistrate erred and misguided herself in issuing the order when no proper arrangements and care plan had been made for the child within the family or ensure that, there was a care plan in place or one to put in place which was overlooked inadvertently.

(4) That the Honourable Trial Magistrate erred in failing to take into account the best interest of the subject who is still in school and under the custody and care of One More Day for Children (OMDC)

(5) That the child was to be involved in making the orders and the Counsel watching brief for the Complainant was not notified.

10. In my view there is no error in the order of 12th July 2016 which requires Revision by this court. The Learned Chief Magistrate in hearing the grandparents of the minor before making the order of 12th July 2016 was within the provisions of the law in particular Section 123 of the Children’s Act provides

”where a child is brought before a court as being in need of care and protection, the court shall allow this parents or guardian or the person who has parental responsibility for such child to be heard on any application made in relation to the child.”

11. It was after the Learned Chief Magistrate heard from the grandparent that she formed the opinion that the best interest of the minor child were served with the release of the custody of the minor child to her grandparents. The court when it ordered for care plan report to be made on the minor on 10th august, 2015, it was because it wanted to be assisted in determining the best interest of the child. The same court on 12th July 2016 heard from the minor child’s grand parents and it became satisfied that the best interest of the minor would be served by the gran parents having custody of the child. There is no contradiction in my view of the two orders and there is no reason for this court to revise the order of 12th July 2016.

12. I order file of Chief Magistrate’s court P & C No. 12 of 2015 be returned with a request that the chief Magistrate does obtain recent and detailed reports from Rarienda Children officer on the subject. Such a report should confirm whether the **accused A G A** is in breach of the court order of 12th July 2016 which restrained her from interfering with the custody of the subject.

13. It is so ordered.

Dated and Delivered this 23rd day of November, 2016

MARY KASANGO

JUDGE

Coram

Before Justice Mary Kasango

Court Assistant

Kiget for the OMDC

For D P P

Mr. Musindany Agala for S C C O

COURT

Ruling delivered in open court.

MARY KASANGO

JUDGE