



**REPUBLIC OF KENYA**

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

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**MISC. APPLICATION NO. 141 OF 2016**

**DMK .....APPLICANT**

**AND**

**LNM .....RESPONDENT**

**RULING**

1. The applicant DMK and the respondent LNM are a married couple who have been separated since 2009. Their home is at Katheri in Meru. Presently, the applicant is a prison warder at Embu GK Prison. The respondent teaches at [particulars withheld] High School where she lives with their children.
2. On 29<sup>th</sup> July 2016 the respondent filed a suit at the Children Court at Milimani seeking that she be given legal, actual and physical custody of their two children, G.W. born on 12<sup>th</sup> August 1998 and K.G. born on 1<sup>st</sup> February 2005. She asked that an order does issue for the applicant to maintain the two children. The applicant filed a defence denying the claim and sought the dismissal of the suit with costs. In defence, he sought the transfer of the suit to Embu Court which was near and convenient to him. The suit is pending.
3. On 1<sup>st</sup> November 2016 the applicant filed the present motion seeking the transfer of the suit to the Children Court at Meru for hearing and disposal. He claimed that he was diabetic and disabled, and that, although he works at Embu, he goes to Meru town to attend his medical clinic. He stated that he was on insulin treatment that requires his injections and medicines kept in a fridge, and therefore it would be inconvenient for him to be coming to Nairobi for the hearing of the matter. He further stated that he lives on little salary not even enough to cater for his medicals and would not therefore find fare to be coming to Nairobi for the hearing of this case. Lastly, he stated that it was the requirement of the law that a plaintiff institutes a suit where the defendant works for gain and resides.
4. The respondent opposed the application for transfer. Her case was that after the couple separated in 2009 she moved to Nairobi with the children. She wanted to seek medical help as she suffers from mental illness and epilepsy, and that Nairobi was the only place she would get specialised medical help. She claimed the applicant has since completely failed in his parental responsibility over the children, and left the entire burden to her. She stated that Nairobi would be, under the circumstances, the suitable place to have the dispute over the children heard and determined. Lastly, she stated that the application was tactically abusive of the process of the court and a means to delay justice for the children.
5. The parties addressed the court on this issue of transfer, and reiterated what they had deponed to in the respective affidavits.
6. The applicant, in the defence, sought that the suit between them be transferred to Embu Children Court for hearing and disposal. This is where he works and resides. However, in the application he sought that the suit be transferred to Meru Children Court. He sought Meru Court because, he said, that is where he

goes for treatment. His defence and application were therefore at variance. That cannot help him in his quest for transfer.

7. I am mindful that both the applicant and the respondent have medical difficulties and challenges. However, this dispute is not about them. It is about the children named in the plaint. They are the ones who seek to be maintained. They stay with the respondent in Nairobi. This is since 2009. They may very well be called to testify in the matter. Even if they are not asked to testify, under **section 4 (2)** of the **Children Act (Cap. 141)**:\_

**“2. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislature bodies, the best interests of the child shall be a priority consideration.”**

8. Considering the above, I determine that the best forum for the resolution of the dispute between the applicant and the respondent concerning the maintenance of their two children would be in Nairobi. I consequently dismiss the application by the applicant for transfer of the suit. This is a family dispute and therefore will not make any order regarding costs.

**DATED and DELIVERED at NAIROBI this 14<sup>th</sup> day of DECEMBER 2016**

**A.O. MUCHELULE**

**JUDGE**