



**REPUBLIC OF KENYA**

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

**HIGH COURT CIVIL APPEL NO. 87 OF 2014**

**CHILDREN'S CAUSE NO 1346 OF 2012**

**A W F.....PLAINTIFF**

**VERSUS**

- 1. C K.....1<sup>ST</sup> DEFENDANT**
- 2. T K.....2<sup>ND</sup> DEFENDANT**

**RULING**

**ORAL SUBMISSIONS**

On the 28<sup>th</sup> November, 2014, Ms Muhoho for the Applicants informed the Court that the matter is an appeal arising from the judgment of the Children's Court.

However at the moment, her clients were seeking reasonable access to see the child as for two (2) years they have not accessed the child.

Ms. Morara for the Respondent told the Court that since the matter is an appeal, this Court should obtain the Court file from the Children's Court and appraise itself with the matter.

In the meantime, it was disclosed that parties had explored negotiations and they had not been successful.

Ms. Muhoho told the Court, the issue is one of agreeing on what reasonable access of the child entails. The Applicants are grandparents of the child whose mother their daughter died shortly after she gave birth to the child. They took the child and took care of the child. The Respondent, the father of the child applied in Court got legal permanent custody of the child while the grandparents were allowed reasonable access.

It was indicated to the Court, that the Applicants see the child for hours; 8.00am to 5.00am at the Sarit centre. They are advanced in age and come all the way from Limuru where they reside and can only see the child for hours.

The Court ordered for the Court file 1346 of 2012 from the Children's Court and the matter was mentioned on 8<sup>th</sup> December, 2014. Again, the Court file was not available until 9<sup>th</sup> December, 2014 at 2.30pm.

The Court went through the proceedings and Judgment of the Court. Counsel indicated they were ready

for hearing of the appeal and the Court asked them to take a hearing date in the Registry.

At which point; the Applicants Counsel sought the Courts indulgence on interim orders on the issue of reasonable access until the hearing and determination of the appeal.

The Court sought from the parties and Counsel Proposals on the interim order of reasonable access of the child by the Applicants;

The Applicants' proposed;

- a) Alternate weekends twice a month the child be picked at 5.00pm Friday and is returned 5.00pm Sunday
- b) The Applicants have the child two (2) weeks for Christmas and the father two (2) weeks thereafter.

The Respondent proposed;

- a) The Applicants to pick the child two (2) times in a month and return the child on the same day.
- b) The father of the child to have the child on the two (2) important occasions Christmas and New Year.

After consultations with the parties and giving their views on the issue and other pertinent issues;

The Court observed there was extreme tension and hostility from both the grandparents and the father of the child understandably due to the loss of their daughter and fiancée respectively.

However, during the discussion proposals were made with a view to giving the judgment of the children's Court effect through emphasis on the fact that it is in the best interest/welfare of the child that both the child's maternal (grandparents) and paternal (father) family are involved in her growth and development.

## **LAW**

This Court is guided by the provisions of;

- a) **Article 53 1(d) and (e) (2) Constitution of Kenya 2010.**
- b) **Section 4(3) Children 2001.**
- c) **Section 83 (2)(a) (b) & (j) of Children Act 2001**
- d) **Sections 86 of Act 2001** to give effect to the judgment of the Children's Court before the appeal and have best interests of the child.

The Judgment of children's Court is as follows;

- 1) Legal permanent custody of the minor shall vest with the plaintiff with reasonable access by the defendants.
- 2) The plaintiff and defendants shall at all times ensure that the welfare of the minor herein is safeguarded.
- 3) To give effect to the dual responsibility to uphold the welfare of the child by all parties until the hearing and determination of the appeal;

The Court orders as follows;

Taking into account the circumstances of this matter; the grandparents and family of the child's deceased's mother and the father and his family and the child's legal guardian have a dual responsibility to participate and uphold the welfare of the child. To do so reasonable access on each side more than cursory meeting is required.

The Residence and contact orders are;

- a) The father of the child shall have two (2) weeks Christmas holiday with the child
- b) Thereafter on 29<sup>th</sup> December at 10 am the child shall be picked by M to their grandparents for 1 week holiday with the maternal family and be returned or picked by J on 4<sup>th</sup> January, 2015 and returned to the father by 5.00pm in readiness to return to school.
- c) Thereafter, each side the father and grandparents shall have the child on alternative weekends; the child will be picked from the father on Saturday at by 10.00am and returned on Sunday at 5.00pm
- d) In the intervening period the child will be picked by M (daughter in-law of the Applicants) on behalf of the grandparents and J (sister of the father of the child) on behalf of the father until the parties are agreeable to meet and amicably resolve and cooperate in terms of the best interest and welfare of the child.
- e) There shall be no meeting points in hotels, restaurants parks unless agreed on by the parties to meet and handover the child.
- f) There shall be free communication between the father and grandparents on the welfare of the child.
- g) This arrangement will subsist until the hearing and determination of the appeal.
- h) Each of the parties is at liberty to apply to the Court for further orders
- i) Further mention on 26<sup>th</sup> February, 2014 for further directions.

**READ AND SIGNED AT NAIROBI THIS 15<sup>TH</sup> DAY OF DECEMBER, 2014**

**M. MUIGAI**

**JUDGE**

***In the absence of;***

***Parties and Counsel.***