



**REPUBLIC OF KENYA**

**High Court at Mombasa**

**Miscellaneous Civil Application 26 of 2012**

**LATIFA ZENA ABDIN AHMED.....PLAINTIFF/RESPONDENT**

**VERSUS**

**ARIF ALI MOHAMED.....DEFENDANT/APPLICANT**

**RULING**

Before court is the application brought under certificate of urgency seeking the transfer of **Children Case No. 717/2012** currently pending before the Tononoka Childrens Court to Nakuru Law Courts. The applicant in his supporting affidavit avers that he is unwell and is therefore not able to travel to Mombasa for the hearing of the suit.

The application for transfer is vehemently opposed by the respondent. I have considered the oral submissions made by **MR. MWINYI** for the Applicant and **MR. MUINDE** for the respondent. The applicant has annexed a medical report indicating that he suffers from depression and is on medication. However, I note that this case involves the welfare of a minor and this court is obliged to rule in the best interests of the child. The child lives with the respondent (his mother) in Mombasa where he also attends school. In view of the fact that the child may on occasion be required to be in court, it is more convenient that the matter be heard and determined where the child resides. On the other hand the applicant even if he is ever required to testify on his own behalf may only need to make one court appearance. Other procedures may be handled on his behalf by his advocate. The fact of depression does not physically prevent the applicant from making one trip to Mombasa in order to testify. If he is not in a fit mental state he is at liberty to seek an adjournment until such time as he has recovered sufficiently to enable him to travel.

In my view the balance of convenience tilts in favour of the child. I therefore dismiss this application for transfer of this case.

No orders on costs.

**Dated and Delivered this 8<sup>th</sup> day of February, 2013.**

**M. ODERO**

**JUDGE**

In the presence of:

Mr. Mutugi h/b for Mr. Mwinyi for the Applicant

Mr. Muinde for the Respondent