



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

Misc. Application No. 1 Of 2013

P K P.....Applicant

Versus

N K.....Respondent

RULING

The Applicant **P K P** filed this application dated 4/1/2012 seeking transfer of a case she had filed in the Childrens Court in Nairobi being **NAIROBI CHILDREN CASE 839 of 2012** from Nairobi for hearing and determination in Mombasa. The Application was opposed by the Respondent **N K MR. MKAN** Advocate acted for the applicant while **MS. ADAGI** appeared for the Respondent.

The Applicant and the Respondent had cohabited for a period of time and together they bore a son **C S M** born in 2006. After sometime their relationship turned sour and the applicant moved to Mombasa leaving the child in the custody of the Respondent in Nairobi. In her grounds in support of this application for transfer of the case the applicant states that firstly being without a job she is unable to afford the fares for constant trips to Nairobi in pursuance of the case. Secondly the applicant stated that she lives with the child in Mombasa. As it turns out this latter statement proved to be false. The applicant had deviously omitted to inform the court that the child only came to her in Mombasa pursuant to a consent entered into between the parties allowing her custody during the school holidays. The child was under the terms of said consent to be returned to Nairobi when schools re-opened. The applicant was thus trying to benefit from her contempt of the consent to sanction her continued custody of the child. This as I found amounted to an abuse of court process. As matters now stand the child lives in Nairobi with the Respondent and attends school in Nairobi. As a general rule it would be more expedient and convenient to have a custody case heard and determined in the location where the child lives. This way if the child is ever required to be in court he would not have to travel long distances. Whilst I appreciate that travel to Nairobi may dent the applicants pocket, I do not anticipate that she would require to travel there more than three or four times in total. Once the issue of custody is determined then the need for frequent travel will cease. The childrens court in Nairobi already has conduct of this matter. In the interests of justice the case ought to be concluded there I find no merit in this application to transfer the case. The same is dismissed. Each party to bear their own costs.

Dated and delivered in Mombasa this 14th day of June, 2013.

M. ODERO

JUDGE

No appearance by either party.

M. ODERO

JUDGE

14/6/2013