



**REPUBLIC OF KENYA**

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

**FAMILY DIVISION**

**CIVIL APPEAL NUMBER 4 OF 2012**

**D N K.....APPELLANT**

**VERSUS**

**C S M.....RESPONDENT**

**RULING**

The application for determination is dated 13<sup>th</sup> February 2012. In it the applicant, the father of the children the subject of the dispute, would like stay of an order made by the Children's Court in Kiambu Children's Case No. 18 of the 2011 awarding custody of the minor's to the mother, the respondent herein.

The background is that the parties are married to each other. The respondent is a school teacher. It appears that she had an episode of mental disturbance and this is the reason that the applicant is asking to be allowed to retain custody of the children. The children came to be in his custody in July 2011. Their mother had taken them on a journey to Kitui, her original home, when she ran out of money and was forced together with the children to sleep out in the cold. They were rescued by the police and handed over to the father, the applicant herein.

It would appear that this Kitui incident provoked the filing of the Children's Case at Kiambu. After hearing both sides on an application for custody, the Children's Court awarded custody of the children to the mother. The court was guided by the general principle stated in the famous case of *Githunguri vs. Githunguri* (1981) KLR 598, where it was held that custody of young female children should be granted to their mother unless there are exceptional circumstances. The minors are of tender years for they were below eight years at the time.

The appeal on record challenges that order of the Children's Court. The court is accused of failing to appreciate the law and facts on the matter.

I have carefully gone through the papers filed in this matter, the ruling impugned in the appeal and application, as well as the submissions made and authorities cited by counsel. The issues raised in the application are the subject of the appeal. I will not pre-empt the appeal by analysing the facts as this goes to the core of the appeal itself.

I am not prepared to interfere with the decision of the trial court at this stage by staying the orders made on 7<sup>th</sup> February 2012. Let the applicant speed up the hearing of his appeal so that all these matters can be addressed comprehensively. The application dated 10<sup>th</sup> February 2012 is hereby dismissed. There will be no orders as costs.

**DATED, SIGNED and DELIVERED at NAIROBI this 26th DAY OF September, 2013.**

**W.M. MUSYOKA**

**JUDGE**