



**REPUBLIC OF KENYA**

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

**CIVIL DIVISION**

**CIVIL CASE NO. 410 OF 2011**

**S.M.G..... APPLICANT**

**VERSUS**

**G.M.K..... RESPONDENT**

**R U L I N G**

1. The applicant is the defendant in **Murang'a SRM Children's Case No. 34 of 2008** (the **Murang'a Case**) while the Respondent is the plaintiff. The suit was purportedly filed on behalf of a minor by his next friend, the Respondent, but it is clear that the Respondent filed the suit on his own behalf. The minor is the child of the parties who were and still are a married couple though separated.
2. The Applicant says she was chased away from the matrimonial home by the Respondent under threat of death and forced to leave behind the child of the marriage (who was then less than 2 years old and breast-feeding). On his part the Respondent says that the Applicant deserted the matrimonial home and abandoned the child.
3. In the Murang'a Case the Respondent (who is plaintiff) sought custody of the child and an order of parental responsibility against the Applicant (as defendant), *inter alia*. The Applicant counterclaimed for custody of the child. The court at Murang'a gave interim custody of the child to the Respondent. It subsequently refused the Applicant's application for interim custody.
4. The application now before this court (**by chamber summons dated 22<sup>nd</sup> September 2011**) seeks the main order for transfer of the Murang'a Case to the Children's Court, Nairobi for hearing and disposal. The application is opposed.
5. I have read the supporting and opposing affidavits. I have also considered the submissions of the learned counsels appearing.
6. These facts are not in contention:
  - (i) Both parties are man and wife though separated.
  - (ii) They both live and work for gain in Nairobi.
  - (iii) They so worked and lived in Nairobi with the child before separation.

7. It is thus not readily clear why the Respondent decided to file the suit in Murang'a and not at the Children's Court, Nairobi. But it does appear that the Respondent's relatives live in Murang'a. When the Murang'a court gave him interim custody of the child, he took the child to his own mother in Murang'a. So, though he has legal interim custody of the child, he is not the one who lives with her.
8. In all proceedings involving a child, the guiding principle is that the welfare of the child is paramount.
9. In the instant case, is the welfare of the child best served when the case involving her is at Murang'a or at Nairobi?
10. It is useful to reiterate that both the child's parents reside and work for gain in Nairobi. Their matrimonial home is in Nairobi, though they are currently separated. In a case involving the welfare of the child the court may need the presence in court of the parents as well as the child from time to time.
11. It is also apparent that there was no compelling reason why the Respondent filed the suit at Murang'a and not at Nairobi, except probably to keep the child as far away as possible from the Applicant.
12. Looking at the welfare and the best interest of the child, I hold that the same will be best served by the case involving her being at Nairobi (where both her parents live and work) rather than at Murang'a.
13. In exercise of the court's inherent power, I will allow the application in the circumstances. Murang'a SRM Children's Case No. 34 of 2008 is hereby transferred from that court to Nairobi Children's Court. Costs of the application shall be in the cause. It is so ordered.

**DATED AT NAIROBI THIS 18<sup>TH</sup> DAY OF APRIL 2012**

**H.P.G. WAWERU**

**JUDGE**

**DELIVERED AT NAIROBI THIS 20<sup>TH</sup> DAY OF APRIL 2012**