



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Miscellaneous Civil Application 384 of 2012

Editorial Summary

1. *Civil Appeal*

2. *Subject of Magistrate court case*

Children Act 2001

3. *Application dated 27th June 2012*

3.1 *Application to transfer the childrens court case
from Homa Bay Childrens Court to the
Nairobi Childrens Court.*

REASONS:

- i) *The children live and school in Nairobi.*
- ii) *The witnesses are based in Nairobi.*

4. *Application opposed*

4.1 *The applicant is still married to the respondent.*

4.2 *Section 9(c) Civil Procedure Act, a matter
is filed where a person resides.*

4.3 *The applicant is resident of Homa Bay.*

4.4 *Childrens presence is not required.*

5. **Held:**

5.1 *That the transfer be granted.*

5.2 *The applicant is a businessperson and
children are in school in Nairobi.*

6. *Case Law:*

Statute Law:

Section 18 (1)(b) Civil Procedure

Act.

7. *Advocates :*

i) *M.M. Kinuthia instructed by M/s Kinuthia Kahindi & Co Advocates for applicant*

ii) *W.L. Khalwale holding brief for S. Nyauke instructed by M/s Nyauke & Co Advocates
for respondent*

IN THE OF CHILDREN ACT, 2001 OF THE LAWS OF KENYA

IN THE MATTER OF N.G, A.O & J.A (MINORS)

T.M (suing as next friend of minor)

APPLICANT

VERSUS

M. C.O..... RESPONDENT

RULING

I. **PROCEDURE**

1. This matter emanates from the Childrens Court. In order to protect the identity of Children, their names should be concealed and the proceedings/pleadings should reflect their initials only. In this case NG, AO & JA (minor.)
2. The application before court seeks that a Childrens Court matter filed in Homa Bay be transferred to the Childrens Court at Nairobi.
3. The reasons for this is that the applicant, the defendant in the childrens case works for gain as a businesswoman in Nairobi. She alleges that it is her who maintains the three children in schools in Nairobi.
4. Her attendance to court cases at Homa Bay would see her close her business which would be detrimental to her. Her witnesses are also situated in Nairobi and it would be convenient to her to have the case heard in Nairobi.
5. The respondent/plaintiff should be able to attend court in Nairobi. He normally resides with his brother who also lives in Nairobi.
6. This application was opposed by the respondent on grounds that under Section 9(c) of the Civil

Procedure Act, a suit is filed where a person resides. The applicant is still his wife and therefore a temporary resident of Homa Bay. The children's presence to attend court is not required. He prayed that the application be dismissed.

7. Section 18(1)(b) of the Civil Procedure Act provides for powers by the High Court to transfer a suit from one court (subordinate) to another subordinate court for trial and or disposal.

8. In this application, the reasons raised by the applicant, a mother and businesswoman who relies on her means to allegedly support herself and her children in Nairobi, may have this means disrupted having to travel many miles to hear her matter.

9. For expediency, the hearing of the matter in Nairobi would be convenient to more persons including her witnesses and those of the respondent who reside in Nairobi.

10. I would in the circumstances allow the application as prayed.

11. The costs be in the main suit.

DATED THIS 16TH DAY OF OCTOBER 2012 AT NAIROBI

M.A. ANG'AWA

JUDGE

Advocates :

iii) *M.M. Kinuthia instructed by M/s Kinuthia Kahindi & Co Advocates for applicant*

iv) *W.L. Khalwale holding brief for S. Nyauke instructed by M/s Nyauke & Co Advocates for respondent*