

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Appeal 31 of 2009

G.W. N..... APPELLANT

VERSUS

C.M.K.....RESPONDENT

RULING

This is an application by G.W.N, who has also preferred an appeal against the decision of the learned Senior Resident Magistrate Ole Tanchu on 2/4/2009, in which he granted the custody of a nine year old minor who I shall refer to as ‘the minor’ to his father, C.M.K (‘the respondent’).

The minor’s mother who died in July 2008 was the applicant’s niece. The applicant took the minor into her custody and she claims that she has been catering for all his needs since his mother’s death.

She prays for stay of execution of the said order, as well as an order to stay the proceedings in the subordinate court until her appeal is heard and determined, and she therefore bases her application on the grounds that the respondent ‘is a perpetual drunkard with no fixed income and, who has never exercised any parental responsibility over his son.

Though the respondent was not able to file his reply and that application proceeded unopposed, I note that the issues which the applicant raises in this application were canvassed at length in the subordinate court, and that after due consideration, the trial Magistrate delivered his decision in this respondent’s favour.

The fact that it is the respondent who actually handed over the child to the applicant soon after his wife’s death, is contentious for he states that they agreed that she would have him in her custody for only five months till December 2008, to allow the minor to heal psychologically.

I have held time and again, that in an application of this nature, the interest of the minor is paramount, and that that of his parents or third parties is secondary. Needless to say, every minor needs to, and has a right to share his life with his parent, no matter how poor they are and the applicant cannot be heard to claim more rights to him just because she is better endowed.

I dismiss the application with costs. **Dated and delivered at Nairobi this 7th day of August 2009.**

JEANNE GACHECHE

Judge

Delivered in the presence of:

For the applicant – Mr. Gacheru

For the respondent – No appearance