

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

Civil Appeal 84 of 2006

FRANCIS MUCHANGI NJUE.....APPELLANT

VERSUS

TERESIA NYAGA.....RESPONDENT

JUDGMENT ON APPEAL

The appellant has filed this appeal complaining of Resident Magistrate at Embu in Children Case No. 1 of 2005.

The grounds of appeal are set out in the memorandum of Appeal. The dispute as shown in the plaint is regarding the maintenance of two children Brian Murimi and Ian Gachoki. The Respondent also sought her own maintenance and legal custody of the two children. After full hearing, the Trial Magistrate delivered Judgment on 23/3/2006. The Trial Magistrate found that the parties had cohabited from 1993 to 10th July 2000 and that the parties are parents of the 2 children and therefore the appellant had acquired parental responsibility under Section 25 (2) of the Children Act and that the appellant had a duty to maintain the two children by virtue of Section 90 (e) of the Children Act. The Trial Magistrate held that the two parties shall have joint responsibility of maintaining the two children subject of the suit.

The first ground of appeal related to the evidence of Respondent that was not corroborated. It is my finding as correct that the finding by the Trial Magistrate was that the cohabitation was from 1993 to year 2000. Therefore for purposes of Section 25 (2) of the Children Act there was cohabitation for a period or periods which amount to not less than 12 months. The evidence Act does not require every witness's evidence to be corroborated. However where corroboration is required it is so stated. The evidence was believed by the Trial Magistrate and there was no need for corroboration the first ground is with no merit. Regarding ground 2 and 3 there was evidence of cohabitation and the DNA evidence on the paternity of the two boys. The mother plaintiff states that she started cohabiting with Appellant as husband and wife in 1993 and first child was born in 1994. The second child was born in 1997 while parties were still living together. He evidence was firm on cross-examination and added to the evidence of DNA test. Dr. Peter Ndirangu Gatuma gave evidence after the court ordered for DNA test who said currently the good standard for proof of paternity is to carry out DNA analysis. From what is stated, the test was done through Nairobi Hospital and the communication was carried out through E-mail the modern way of communication nowadays.

It is my finding that the unchallenged evidence of the mother and the Doctor's evidence/opinion is proof that the Appellant is the father of the children.

On grounds number 4 and five the Trial Magistrate used the expression "some what right" was not casual. It was the correct position according to the record. But in view of the duration of cohabitation 1993 to 2000 the Appellant was referring to the Respondent as a "friend" It is to be noted that the Children Act was enacted to protect the interests of children (see the preamble to the Act) until they attain the age of 18 years. Therefore the evidence is to be interpreted in that light. The contradictions mentioned by Appellant are minor and do not detract from the main evidence that the Appellant was the father of the two boys and that he had acquired parental responsibility for the two children under Section 25 (2) of the said Act.

Upon consideration of the above, I find that the grounds of Appeal have no merit. The appeal is dismissed with costs to the Respondent.

Dated this 18th of January, 2008.

J. N. KHAMINWA

JUDGE

18/1/2008

Khaminwa – Judge

Njue- Clerk

Mr. Kathungu for Respondent present

Read in open court.

J. N. KHAMINWA

JUDGE