

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU**

Misc. Appli. 115 of 2007

FRANCIS CHEPTUMO KOMEN APPLICANT

VERSUS

CONSOLATA EKWEL LOMILIO RESPONDENT

RULING

The respondent herein filed a claim against the applicant in the Children Court at Meru being C.M. Children Case No. 62 of 2007 for maintenance. The applicant who works in Nyeri is seeking in the instant application that the said Meru CM Children Case No. 62 of 2007 be transferred to Nyeri CM Children Court for hearing and final determination.

The application is premised on the ground that in the interest of justice it is only fair to transfer the case to Nyeri where the applicant resides and works. That no prejudice will be caused to the respondent.

In her replying affidavit the respondent has averred that she resides at Isiolo and that she filed the cause at Meru due to its central location and convenience. That there is no children court at Isiolo and further that if the cause is transferred to Nyeri she stands to suffer prejudice.

I have considered both sides of the argument and hold the following view of the matter. This court (Lenaola, J) on 31st October 2007 recorded a consent staying proceedings in Meru CM Children Case No. 62 of 2007 pending the hearing and determination of this application.

The application is expressed to be brought under Order 50 Rule 1 of the Civil Procedure Rules and sections 3A and 15 of the Civil Procedure Act. The provisions of sections 15 and 18(1) (b) (ii) of the Civil Procedure Act must be read together with the Children Act as a whole. Although section 15 aforesaid provides that a suit must be instituted in a court within the local limits of whose jurisdiction the defendant actually lives or works for gain, the policy consideration underlying the provisions of the Children Act is that whatever orders are sought; the court in considering the same must be guided by the principle of the best interest of the child.

In my view, it is in the best interest of the child that Meru CM Children Case No. 62 of 2007 continues to be heard at Meru.

I so order and make no orders as to costs.

Dated and delivered at Meru this 3rd ...day of...June..... 2008

W. OUKO

JUDGE