



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT ELDORET**  
**Misc Civil Appli 174 of 2007**

**NEMWEL NYASAGARE NYANARO ..... APPLICANT**

**VERSUS**

**HENRIETA MORAA**

**(Minor Suing through JANET MAGOMA ONKUNDI).....RESPONDENT**

**R U L I N G**

I have considered the application for Eldoret Children's Court, Case No. 44 to be transferred from the Eldoret Children's Court to Thika Children's Court. I have considered the rival affidavits and submissions by Counsel.

The Plaintiff and Defendant are husband and wife and appear to be estranged and living apart. The Plaintiff H. M. is a child of the union and is aged three (3) years old. The mother through whom she has brought this case says she lives in Eldoret. The father of the children is residing and working in Thika. It is clear that apart from the question of jurisdiction the Applicant/Defendant wishes to have the case transferred to Thika for his own convenience.

The Plaintiff has sought orders of guardianship, maintenance and custody of the minor. The Defendant seeks the entire dismissal of the suit without any admission of any parental responsibility.

I do not see how moving the case to Thika therefore can be for the best interest of the child. For some reason the parents are not living together. The minor is with the mother who seeks the said orders. The father has not asked for custody or even access/visitation. On the basis of the pleadings the child is in Eldoret. She is the subject of the suit and the main claimant.

The question of jurisdiction was before the Children's Court and raised in the Defence. However, by filing this application the Defendant has presented the said question of law to this Court and this Court is obliged to decide upon it. The provisions of Section 12 and 15 are subject to the best interest and welfare of children.

This Court is obliged to decide all matters relating to children with due speed and dispatch without undue regard to technicalities of procedure.

The child/minor is in Eldoret with the mother. The Defendant has not claimed that he is maintaining them in his Defence. The Defendant only wants dismissal of the entire case. I see no basis for the case to be moved to Thika. One side is bound to be inconvenienced. It should rather be the father than the child. The father Applicant has not said how the child will be provided for while in Thika and whether he would bear the costs of travel or if the mother decided to take residence at Thika whether he would maintain the child and mother over there.

I find that it is in the best interest and welfare of the child that the case is heard in Eldoret. The said interest is of paramount consideration. I decline to transfer the case. The application is dismissed with costs to the Respondent.

DATED AND DELIVERED AT ELDORET ON THIS 25<sup>TH</sup> DAY OF JULY, 2007.

M. K. IBRAHIM

JUDGE