

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

Civil Suit 206 of 2003

D M M PLAINTIFF

VERSUS

NGOA KIGODI

T K DEFENDANTS

J U D G E M E N T

These proceedings are commenced by way of a plaint filed on 26.8.2003. The plaintiff claims that he was and is the biological father of the child P W a girl then aged 11years. He accuses the defendants of taking away the girl on 4.4.98 claiming that the same child was born by them and she is their daughter. This matter was referred to Children's Officer and Resident Magistrate's Court at Kwale. The plaintiff seeks declaration that he is the biological father of the child and he should be permitted to take the girl to his house and to take care of her henceforth.

The plaintiff gave evidence. He produced a copy of birth certificate for the child – exhibit 1. The child had left home in Makueni with her relations to visit Mackinnon Road area where the sister of plaintiff was residing. Plaintiff was later informed that the child had disappeared. He came to Mackinnon and the child was found with the defendants. The matter was reported to police and the chief and the parties were told to take the dispute to Lunga Lunga Police Station where the defendant claimed their child had been stolen.

Eventually a DNA report was carried out but the defendants disputed the results.

PW2 was the mother of the child. She gave evidence as to how she gave birth to her second child, P W in 1992. She produced exhibit 3.

The defendants also gave evidence and it was suggested and agreed by all parties that a second DNA test be carried out.

A report dated 30.6.2005 was produced by Ali Gakweli Government analyst in Mombasa. The opinion was that on analysis of DNA, profiles of the parties showed the defendants T N K and N K are excluded as biological parents of the child. That chances are that 99.999% the plaintiff D M and his wife Monica are the biological parents of W.

That opinion was not challenged.

I therefore enter judgment for the plaintiff as prayed in the plaint.

I declare the plaintiff to be the biological father of the minor child P W and I grant him care and custody and control of the minor child until the child attains the age of majority.

The child shall be released to him forthwith.

Each party shall pay its own costs arising out of this case. Orders accordingly.

Dated the 14th September 2006

J KHAMINWA

JUDGE