

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

Civil Appeal 66 of 2006

PAMELA NJOKI NTHIGA.....APPLICANT

VERSUS

DAVID KARIA.....RESPONDENT

RULING

There is an appeal filed by the applicant against the decision of Children Court at Embu which granted the custody of the child aged then 9 months to the father.

This application is for interim orders pending that appeal. The parties are in court with child. Today the child is 15 months old. He is residing with the relatives of the father far away from Embu where the father resides and works. Timau is a long distance from Embu and the father can give attention to the child only rarely when he can travel to Timau. On the other hand the mother /Applicant is residing with her parents here in Embu. The matters to be considered in this case is whether it is in the best interest of the young child to be in custody of people who are not his mother.

The principles as to who best suited to keep the custody of young child below the age of 7 years is in favour of the mother who is acknowledge to give the child comfort and proper emotional support and motherly love. This is an international principle based on expert opinion. However as the courts have pronounced there are cases in which circumstances have been such that the mother cannot be considered to be the best person to be granted custody of the young child. These are very rare and exceptional circumstances. Under the repealed Guardianship Act Cases, the courts have considered children aged below 7 years to be of tender years.

In this case the child is 15 months old. Before he was taken away. He was breast feeding. It is my finding that the child is too young to be entrusted to the other person other than the mother. I do not find this to be a case of exceptional circumstances and this is only an interim application. In the circumstances, I grant the interim control care and custody of the child Victor Mugambi to the mother the applicant.

This order to be served upon the Children Officer Embu. Costs of this application shall be in the appeal.

Orders accordingly

J. N. KHAMINWA

JUDGE

Mr. Njagi: We ask for clothes of the child.

Mr.Okwaro: The clothes of the child will be passed to the mother.

2nd Oct 2006

J. N. KHAMINWA

JUDGE