

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

DIVORCE CAUSE NO. 174 OF 2002

VERONICA W. WANAMBISI PETITIONER
VERSUS
KENNEDY BARASA WEKESA RESPONDENT

R U L I N G

From what has been brought to my attention during the hearing of Chamber summons dated 4th October 2002 filed by Veronica Wambani Wanambisi against Kennedy Barasa Wekesa praying for custody of their two children and a restraining order, the same Chamber summons be and is hereby dismissed for the following reasons:

Firstly since the Applicant says she does not know where the children are and that she has never been to the matrimonial home in Bungoma District and gives the impression that she would not even like to be there, her statements that the children are living with a stranger and that the Respondent is not caring for them have no foundation.

Secondly, while in her affidavit dated 4th October 2002 the Applicant suggests that the children are with their paternal grandmother, in her oral submissions she claims the children are with a stranger she does not know.

Thirdly, while the Respondent has produced evidence to show that he has been caring for the children maintaining them, educating them and seeing to all their needs and has employed a house help to assist his mother to handle the children, the Applicant has not produced any such evidence.

Fourthly, her evidence concerning her present residence in Nairobi, her employment and her capability to take good care of the two children is suspect and unsatisfactory having left her first born at the age of three years under the care and custody of her mother. She claims to be employed, a claim disputed by the Respondent who says she is unemployed and a person of no fixed abode, but she does not reveal her income and evidence that she is renting a house in Nairobi.

Accepted that the two children, Hellen Nasimiyu and Gilbert Wekesa are 10 and 5 years respectively, children of tender years, but in the circumstances of this case, I hold that the welfare and the best interest of those children will better be served by their being left to remain where they are now the Respondent stating that he is subject to frequent transfers by his employer. He has opened and is maintaining a bank account for the children and goes home twice a month to see them.

Since the parties are still married, each party to bear its won costs of this Chamber Summons.

Dated and delivered at Nairobi this 30th Day of October 2002.

J.M. KHAMONI
JUDGE