



**Mutegi v Mutembei (Civil Appeal E003 of 2021)
[2024] KEHC 3058 (KLR) (7 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 3058 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NANYUKI
CIVIL APPEAL E003 OF 2021
AK NDUNG’U, J
MARCH 7, 2024**

BETWEEN

DERRICK MUTUGI MUTEGI APPELLANT

AND

SCHOLAR MAKENA MUTEMBEI RESPONDENT

RULING

1. The Application for determination herein is made by chamber summons dated 05/03/2022 and brought under Section 3A of the *Civil Procedure Act*, and Rule 4 of the Children’s Act (General Rules and Regulations) and all other enabling provisions of the law. The application seeks the following orders;
 - i. That the children officer, Baragoi in Samburu County be directed to investigate and present before this Honourable court the status report of the subjects herein.
 - ii. That the costs of the application be in the cause.
2. The application is grounded on the grounds on the face thereof and is supported by an affidavit deponed by the Applicant. It is averred that the Applicant filed an appeal to this court after being dissatisfied with the decree in Maralal Children’s Case No. 10 of 2020. That he is informed that the children’s officer report is necessary to guide the court in arriving at sound, fair and just decision in the best interest of the subject and that no prejudice will be occasioned to the Respondent if the application is allowed.
3. The Respondent did not file a response to the application despite being served.
4. Before filing the application, the Applicant’s had informed the court that the purpose of the children’s officer report is to investigate the present status of the children as to where they live, whether they are



attending school and other factors. The court was informed that there was no such report before the trial court and that the children were of tender ages, 6 and 8 years.

5. I have considered the application and the memorandum of appeal and I have read through the trial court judgement. The Applicant was granted the legal custody of the children with unlimited access to the minors. He was also ordered to cater for educational needs of the minors and to pay a sum of Kshs.5,000/- for monthly maintenance of the minors.
6. The report he seeks to be filed is to investigate whether the children are attending school and where they live.
7. In all matters involving children, the best interest of the child is paramount. In my considered view the application before court, even though not couched in those terms is essentially an application for adduction of new evidence.
8. Having considered the nature of the evidence to be introduced, am satisfied that the same is necessary to enable the court arrive at a finding based on having the advantage of getting independent information on the minors and recommendations from the experts, an element that was missed out at the trial stage.
9. With the result that I find the Application meritable and allow it in terms of prayer (i) and I make the following orders;
 1. The children officer, Baragoi in Samburu County be and is hereby directed to investigate and present before this Honourable court the status report on Tittan Mutegi and Tressy Mwende.
 2. That the costs of the application be in the cause.

DATED SIGNED AND DELIVERED AT NANYUKI THIS 7TH DAY OF MARCH 2024

A.K. NDUNG’U

JUDGE

