



REPUBLIC OF KENYA



RAO (Suing as the Grandmother and Next Friend of the Minors) v DOO (Miscellaneous Application E081 of 2023) [2024] KEHC 2428 (KLR) (Family) (8 March 2024) (Ruling)

Neutral citation: [2024] KEHC 2428 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MISCELLANEOUS APPLICATION E081 OF 2023
PM NYAUNDI, J
MARCH 8, 2024**

BETWEEN

RAO (SUING AS THE GRANDMOTHER AND NEXT FRIEND OF THE MINORS) APPLICANT

AND

DOO RESPONDENT

RULING

1. Before this court is the Notice of Motion application dated 6th April 2023 by which the Applicant seeks the following orders:-
 - a. Spent.
 - b. Spent
 - c. Spent
 - d. Spent
 - e. That this Honourable Court be pleased to order that the proceedings in Children’s Case No. MCCC/E1522/2022 be conducted by another Magistrate in the Children’s Court apart from Hon. C. Oluoch until its logical conclusion
 - f. That this Honourable Court do issue directions as it deems fit and appropriate to ensure fair administration of justice.
2. The Application is presented under Sections 3, 3 A & 63 (e) of the *Civil Procedure Act*, Cpa 21 Laws of Kenya , Articles 159 & 165 (6) and (7) of the *Constitution* of Kenya and Sections 6, 7 & 13 of the Children’s Act. The Application is supported by the Affidavit of the Applicant sworn on even date.



3. The Respondent has not filed a reply to the Application
4. The Applicant seeks to invoke the supervisory jurisdiction of the Court under Article 165 of the Constitution of Kenya on the basis that
 1. The trial Magistrate has disregarded the laid down procedures in the children’s act thus prejudicing the paramount interest of the minors by overlooking at the laid down procedures for practice hence perpetrating gross miscarriage of justice towards the minors and the Applicant herein.
 2. That the trial magistrate has since, when the matter was listed for hearing on the 16th of November 2022, adjourned the matter severally without any proper reason and has continues to entertain an advocate, who since then has never filed any document in court to regularise his appointment and has also never filed any response to the applicant’s application which situation flies against the rules of practice and as well against the best interests of the minors.
5. In Republic v Chief Magistrate’s Court at Milimani Law Courts; Director of Public Prosecutions & 2 others (Interested Parties); Ex-parte Applicant: Pravin Galot [2020] eKLR the court stated as follows:
 - “59. There is a clear distinction between supervisory jurisdiction, judicial review jurisdiction and appellate jurisdiction. Supervisory jurisdiction refers to the power of superior courts of general superintendence over all subordinate courts. Through supervisory jurisdiction, superior courts aim to keep subordinate courts within their prescribed sphere, and prevent usurpation. In order to exercise such control, the power is conferred on superior courts to issue the necessary and appropriate writs. (see, Gallagher v Gallagher 212 So. 2d 281,283(La. Ct.App.1968)).
 60. This power of superintendence conferred by Article 165 (6) of the Constitution, as pointed out by Harries, C.J. in Dalmia Jain Airways Ltd. v Sukumar Mukherjee AIR 1951 Cal.193 is to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors. This power involves a duty on the High Court to keep the inferior courts and tribunals within the bounds of their authority and to see that they do what their duty requires and that they do it in a legal manner. But this power does not vest the High Court with any unlimited prerogative to correct all species of hardship or wrong decisions made within the limits of the jurisdiction of the Court or Tribunal. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principle of law or justice, where grave injustice would be done unless the High Court interferes. As the Supreme Court of India stated unless there was any grave miscarriage of justice or flagrant violation of law calling for intervention, it is not for the High Court under Article 165 (6) of the Constitution to interfere” (see D.N. Banerji v P.R. Mukherji 1953 S.C 58).
6. In National Social Security Fund V Sokomania Ltd & Anor [2021] eKLR, the court reiterated that the Courts supervisory jurisdiction should be exercised sparingly and only in exceptional circumstances and added that the power should not be exercised where there is an alternative remedy.



7. The allegations made against the Trial Court are grave in nature. This Court therefore called for the lower Court file in order to determine whether the allegations made in the Application were supported by the Court record to warrant issuance of the orders.
8. On perusal of the record I observed that the matter first appeared before the Court on 13th October 2022 when the Court issued the following directions with regard to the Application dated 7th October 2022
 1. That the Application be served for inter partes hearing on 16th November 2022 before Court 1
 2. That a comprehensive children officer's report be prepared and filed by the office under whose jurisdiction the minors reside
9. On 16th November 2022, when the matter came before Court Counsel for the Applicant was present and Mr. Wakiago for the Respondent, he asked for time to file a response Counsel for the Applicant did not object.
10. The file was palced aside and the Court directed that the matter be mentioned on 30th November 2022 for further orders.
11. On 30th November 2022 when the matter was mentioned both parties were represented by Counsel and it was agreed to mention the matter on 26th January 2023 to confirm settlement.
12. On 8th December 2022 the matter came before the Magistrate for directions on Application dated 7th December 2022, the Court directed it be served and mentioned on 23rd January 2023 for directions.
13. The matter was subsequently mentioned on 26th January 2023, it is evident the Counsel were talking as on that date the Court record indicates there were negotiations over access to the minors. The Court directed the matter be mentioned on 27th February 2023 to confirm filing of submissions.
14. On 27th February 2023 when the matter was mentioned in Court the Counsel indicated there was an attempt at a meeting to discuss access. The Court set the matter for further mention on 30th March 2023. When the matter was mentioned in Court on 30th March 2023, it appears that a draft consent had been sent to Counsel for the Plaintiff. They did not agree with the terms of the Consent.
15. The Court then set the matter for mention on 26th April 2023. On this date a new Counsel stated he was coming on record for the Defendant and the Plaintiff's Counsel disclosed that they had filed an application before the High Court.
16. The last orders of the Trial Court were issued on 24th May 2023, when it directed that the matter be mentioned on 17th July 2023 for pre trial conferencing.
17. Having considered the record of the Court I observe that the record contradicts the allegations of the Applicant. At no time did the Applicant raise issue with the representation of the Defendant. Further it is not true that the Magistrate delayed the Conclusion of the matter.
18. It is evident that on the request of the parties the Magistrate deferred the hearing of the matter to enable the parties arrive at a settlement. By the time the matter was finding its way to high Court, 6 months after it was instituted the Court had given a date for pre trial conferencing.
19. This Application is therefore clearly without merit and is for dismissal. There is no basis laid for the matter to be transferred from the Court hearing it.
20. The file is remitted back to the Trial Court for hearing on a priority basis.



21. As the Respondent did not defend the Application there shall be no order as to costs.

SIGNED, DATED AND DELIVERED VIRTUALLY IN NAIROBI ON 8th DAY OF MARCH, 2024.

P M NYAUNDI

HIGH COURT JUDGE

In the presence of:

Sylvia Court Assistant

