



GYM v Director of Public Prosecutions & another (Miscellaneous Criminal Application E049 of 2023) [2024] KEHC 6798 (KLR) (14 May 2024) (Ruling)

Neutral citation: [2024] KEHC 6798 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
MISCELLANEOUS CRIMINAL APPLICATION E049 OF 2023**

GMA DULU, J

MAY 14, 2024

BETWEEN

GYM APPLICANT

AND

DIRECTOR OF PUBLIC PROSECUTIONS 1ST RESPONDENT

DIRECTOR OF NAIMA CHILDREN’S HOME –TAVETA 2ND RESPONDENT

RULING

1. Before me is a Notice of Motion filed on 17th October 2023 filed by GYM a convict in Taveta Magistrate’s Court Criminal (Sexual Offence) Case No. 9 of 2019, who is serving life imprisonment under Section 20(1) of the Sexual Offences Act No. 3 of 2006.
2. The requests of the applicant are as follows:-
 1. That the court be pleased to order the 2nd respondent to allow him to communicate through mobile phone with his children EG and YG.
 2. That the court be pleased to order the 2nd respondent to allow him communicate with his children through mobile phone at least 3 times a year.
 3. The application was filed with an affidavit sworn on October 5, 2023 by the applicant, in which it was deponed that he was a Tanzanian citizen who had been convicted of incest and sentenced to life imprisonment; that they had divorced with the mother of the children; that despite being a prisoner he still remained to be the father of the children; that he relied on the provisions of Section 114(a) as read with Section 133 of the Children’s Act in the present application.
 4. On February 5, 2024, this court ordered the filing of a social inquiry report, which report was filed on February 28, 2024 by Mbitio Mvuria the Co-ordinator Children Services, and was to the effect that as the mother of the two children who currently were in the custody of Naima



Children's Home is not traceable as she has crossed to Tanzania, and since the applicant who is the father is in prison for life and the children are agreeable, he be allowed to talk on phone to them subject to the officials of the children home listening to the conversation.

5. On his part, the learned Prosecuting Counsel Mr. Sirima submitted that based on the contents of the social enquiry report, the State is agreeable that applicant be allowed to communicate with the children, subject to supervision and monitoring.
6. Having myself reviewed and considered the matter, and the social enquiry report, I am of the view that it is in the best interests of the children under Article 53 of the Constitution and the provisions of the Children's Act, to allow the only traceable parent the applicant, to communicate with the children.
7. I thus allow the application and order as follows:-
 - i. I order the 2nd respondent (Director of Naima Children Home Taveta) to allow the applicant Gadiel Yonakijiwa Mwanga to communicate through mobile phone with the two children under his care namely EG and YG.
 - ii. This court orders the 2nd respondent to allow the applicant to communicate to the above two children through mobile phone at least 3 times per year, subject to supervision and monitoring by the 2nd respondent.

DATED, SIGNED AND DELIVERED THIS 14TH DAY OF MAY 2024 IN OPEN COURT AT VOI.

GEORGE DULU

JUDGE

In the presence of:-

Alfred/Trizah – Court Assistants

Applicant

Mr. Sirima for State.

