



Gitau v Gichuru (Civil Appeal E108 of 2022) [2024] KEHC 9410 (KLR) (6 June 2024) (Ruling)

Neutral citation: [2024] KEHC 9410 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL E108 OF 2022**

AB MWAMUYE, J

JUNE 6, 2024

BETWEEN

ANITTAH WANGARI GITAU APPELLANT

AND

LAZARUS MWANGI GICHURU RESPONDENT

RULING

1. Before this Court is the Appellant/Applicant's Chamber Summons Application dated 5th December, 2022. The Chamber Summons sought a total of seven orders, two of which are spent. The remaining five substantive prayers seek orders that:
 - a. Pending the hearing and determination of the Application, the custody of the minor be vested in the Appellant/Applicant;
 - b. Pending the hearing and determination of the Appeal, the custody of the minor be vested in the Appellant/Applicant;
 - c. Pending the hearing and determination of the Application, this Honourable Court be pleased to order that a Children's Officer assess the minor and issue a report to this Court;
 - d. This Honourable Court be pleased to set aside and/or vary the custody orders issued; and
 - e. Costs of the Application be in the Cause.
2. The Chamber Summons Application was supported by the Supporting Affidavit of Annittah Wangari Gitau dated 5th December, 2022. The Supporting Affidavit canvassed a number of allegations; including:
 - a. That the Respondent/Respondent had taken the minor to live with the Respondent/Respondent's mother in Nyahururu whilst the Respondent/Respondent lives in Ruiru;



- b. That the Respondent/Respondent and his mother often deny the Appellant/Applicant access to the minor and only allow it at their whim, a fact that has negatively affected the mental and general wellbeing of the minor;
 - c. That the Appellant/Applicant is apprehensive that the minor child is being mistreated by a domestic staff of the Respondent/Respondent and/or his mother, with the Respondent/Respondent and his mother being oblivious to this situation;
 - d. That the (trial) Court did not provide sufficient reason as to why the Appellant/Applicant was denied custody of her child in favour the Respondent/Respondent as the father of the minor, with the Respondent/Respondent thereafter having donated his parental rights; and
 - e. That is fair and in the interest of justice that this Honourable Court reviews the Custody Order.
3. The Respondent/Respondent opposed the Chamber Summons and the averments of the Supporting Affidavit in their entirety by way of a Replying Affidavit dated 19th June, 2023 deponed to by Lazarus Mwangi Gichuru. The forty-seven paragraph Replying Affidavit, in addition to countering the averments set forth in the Chamber Summons and the Supporting Affidavit, also addressed wider issues of contention between the two parties that touch of the minor.
 4. The Appellant/Applicant filed written submissions dated 6th July, 2023 which were filed on 31st July, 2023; while the Respondent/Respondent filed written submissions dated 13th July, 2023 which were filed on 17th July, 2023.
 5. The Application came up for Hearing on 3rd June, 2024; and the Parties through their respective Counsel each elected to adopt and rely on their written submissions without Highlighting the same.
 6. Having considered the Chamber Summons and its Supporting Affidavit, the Replying Affidavit, and the written submissions of both Parties, it is clear to me that the Chamber Summons delves into matters that are better canvassed at the Main Hearing rather than at the interlocutory stage. Additionally, no evidence has been placed before this Court of either ongoing harm or imminent potential harm to the minor that would necessitate the setting aside or variation of the existing custody orders at this interlocutory stage.
 7. From the pleadings filed in this matter, I take the view that Parties could benefit from utilizing Alternative Dispute Resolution to resolve, or at the very least narrow, the issues of dispute that have led to this matter being before this Court. The minor is still very young and the Appellant and the Defendant have a long journey of co-parenting ahead. They should be facilitated to explore the possibility of a non-contentious and non-adversarial settlement of the co-parenting issues between them.
 8. Accordingly, I issue the following orders:
 - i. The Appellant/Applicant's Chamber Summons Application dated 5th December, 2022 is dismissed with each Party to bear its own costs of the Chamber Summons;
 - ii. This Matter is referred to Court-Annexed Mediation; and
 - iii. The Matter shall be mentioned before the Deputy-Registrar on Thursday, 13th June, 2024 to confirm the appointment of a Mediator and for further facilitative Directions.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 6TH DAY OF JUNE, 2024.



BAHATI MWAMUYE

JUDGE

In the presence of:

Ms. Ombongi h/b for Ms. Etole Counsel for the Appellant/Applicant

Ms. Njoroge Counsel for the Respondent

Ms Benedetta Wambua, Court Assistant

