



**In re FBEVB (Minor) (Miscellaneous Cause 53 of 2017)
[2023] KEHC 2675 (KLR) (Family) (10 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2675 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MISCELLANEOUS CAUSE 53 OF 2017
PM NYAUNDI, J
MARCH 10, 2023
IN THE MATTER OF F. B. E. V.B. (MINOR)**

BETWEEN

IAVB APPLICANT

AND

FBHVB RESPONDENT

RULING

Background

1. The applicant and respondent herein are the parents of the minor herein. Following an application by the respondent the court on August 3, 2017 issued orders requiring that the child remain within the jurisdiction of the court till further orders and that the Department of Immigration Services would enforce the order by notifying all entry and exit points.
2. The applicant now moves the court *vide* notice of motion dated February 28, 2023, seeking to have those orders reviewed and the travel ban be lifted. The respondent also prays that the respondent be barred from interfering with her travel arrangements.
3. The application is supported by the affidavit of the applicant sworn on February 28, 2023.
4. The applicant avers that the respondent secured orders that limit the movement of the minor.
5. That these orders were obtained in a custody dispute case between the respondent and the applicant. That upon securing the orders the applicant left the county and has not been in touch with either the applicant or the minor.



6. The applicant filed a suit in the Children's Court at Kisii, Children's Case No 20 of 2020 in which she was granted sole custody of the minor on February 24, 2021. The respondent did not participate in that case.
7. The applicant has now secured admission at the University of Gottingen, Germany in a residential programme. Her studies are set to commence on January 11, 2023.
8. She has also secured admission for the minor at [particulars withheld]([particulars withheld] school, where he is required to report on April 12, 2023.
9. The applicant contends that she has been the sole caregiver for the child ever since they parted ways with the biological further and that she has the means to provide for the needs of the child.
10. She avers that it is in the best interests of the child if she is allowed to travel with the child and for this reason the travel restriction ought to be lifted.
11. The court examined the minor. He appears not to have a recollection of his biological father. He is happy to travel to Europe.

Analysis and Determination

12. The issue for determination is; whether the court should lift the travel restrictions imposed on the minor.
13. Article 53(2) of the *Constitution* of Kenya provides: A child's best interests are of paramount importance in every matter concerning the child.
14. The minor in this application is aged 9 years. His mother has secured an opportunity to go study in Germany. She is keen to proceed for her studies.
15. With the ban in force it would mean that the mother would proceed to Germany and live the child in Kenya. This is clearly not in the child's interests.
16. The biological father of the child was served with the application he has not challenged it.
17. It is not in the interests of the child to be separated from both parents. Especially in the instant case where the father of the child has not communicated with the child for close to 5 years.
18. Although the applicant seeks for orders barring the respondent from interfering with her travel plans no basis has been laid on which the court can grant the orders. I therefore decline to issue that order.
19. The applicant has persuaded the court that earlier orders of the court should be revised give the change in circumstances and the best interests of the child.
20. Accordingly, it is ordered;
 - a. That the orders of the court issued on July 12, 2019 are vacated
 - b. That the travel restriction imposed on the minor F.B.E.V.B holder of Kenyan passport number AK 0xxxxx6 and holder of Danish passport number 2xxxxx4 is hereby lifted.
 - c. That this order be served on the Director of Immigration services to facilitate the travel of the minor outside of the country on condition that all other legal requirements are met.
21. No order as to costs

It is so ordered.



SIGNED, DATED and DELIVERED VIRTUALLY at NAIROBI this 10th day of March 2023.

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P M NYAUNDI

JUDGE

In the presence of:

Ms. Masaki for Applicant Advocates for the Petitioner/ Applicant

Karani Court Assistant

