



REPUBLIC OF KENYA



In re SMM (Child in Need of Care and Protection) (Criminal Case E020 of 2021) [2023] KEHC 18541 (KLR) (15 June 2023) (Ruling)

Neutral citation: [2023] KEHC 18541 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MAKUENI

CRIMINAL CASE E020 OF 2021

TM MATHEKA, J

JUNE 15, 2023

IN THE MATTER OF SMM.....CHILD IN NEED OF CARE AND PROTECTION

RULING

1. The subject here was charged with murder contrary of section 203 as read with section 204 of the [Penal Code](#).
2. The whole case for the prosecution was predicated on a confession obtained in violation of the subject's rights as provided for under Article 50(4) of the [Constitution](#).
3. The prosecution withdrew the confession and the case collapsed.
4. By dint of the criminal case, the subject became a child in need of care and protection as per section 144(1) (bb) which states that a child in need of care and protection includes who is in conflict with the law or is a witness to, or a victim of, a crime;.
5. The report from Probation and Children Officers by order of this court confirm that the subject is a victim of a broken family where the mother took control of his life – while the father took a back seat. By the time he was through with primary school he had been in 10 different schools. That drew a red flag, and the fact that the rest of the family rejected him, save for his father who came to court religiously.
6. From the Children Officer's report filed on May 25, 2023 – this child was fine until the parents separated and the mother began to toss him from one school to the next, sometimes attending 2 different schools in one year. As a result, he turned to truancy, keeping bad company and drug abuse.
7. However, the reports indicate that during his stay at the Children Machakos Remand Home he has changed. A teacher at the remand home gave a positive report of the child and has been counseled to restore his self-esteem. The views of the management at the remand home are that he was innocent of crime he was charged with.
8. The report from the Probation Officer picked the fact that the subject was in need of care and protection due to his dysfunctional family that had led to his being tossed from one relative to another. He had been traumatized by the charge facing him and his right to education has been infringed



by the manner in which his mother moved him around and the period spent in the remand home as no meaningful education takes place there. It was recommended in both reports that the child be released to the father who was ready and willing to undertake his full parental responsibilities by providing parental care and guidance and ensuring the fulfillment of the child's constitutional rights – in particular the right to education.

9. The issue is how do we achieve this?
10. Under section 150 (2) (k) of the *Children Act* the court is empowered where the court is satisfied that a child is in need of care and protection to: - "... make any other order which the court may think fit and in the best interest of the child."
11. Section 136 of the *Children Act* states "the court may either on its own motion make an order ... placing the child under the supervision of a children officer/ an authorized officer". That means that the subject can be placed on supervision via a Supervision Order during a specific period to enable his reintegration.
12. The Act defines an authorized officer; includes a police officer, a chief, a children's officer, a probation officer, prison officer, a registered medical practitioner, a labour officer, a teacher, or any other officer authorized by the Secretary or under any other written law for the purposes of this Act.
13. This order will be subject to variation or extension on application by the supervisor as provided for by s.136(5) Without prejudice to the generality of subsection (3), the Court may, on application of the supervisor, vary, discharge, or extend the order given under subsection (1) for such further period as the Court may deem necessary, having regard to the best interests of the child.
14. In this case it will also be necessary to issue a residence order under s. 135 of the Act which defines the same as a residence order, requiring a child to reside with a person named in the order and determining the arrangements to be made to facilitate the residence of the child with the person named in the order;
15. This is so as to enable the child to live with his father in the period under supervision.
16. Who should supervise the child? Due to the nature of the matter the child has walked a longer journey with the probation officer. The department filed a pre-bail report, a social inquiry report and a further report with respect to the schooling issues identified. The later report filed on June 7, 2023 – includes an interview with the mother.
17. I have carefully considered all the reports. I also I heard the child and the father and I order as follows:-
 1. A supervision order be and is hereby issued with respect to the subject for 12 months from the date hereof.
 2. The supervision to be carried out by the Probation and After Care Service.in conjunction with the teachers and father of the subject
 3. The subject be released to his father Emmanuel Munguti during the supervision period. A residence order to issue to issue to that effect
 4. The father to ensure that the subject is enrolled in school.
 5. Probation and After Care to ensure referral for counseling for the subject.
 6. Probation After Care to liaise with the father to the subject, and the school to get regular report on the progress.
 7. All the progress reports during supervision be filed with the court in this file.



8. The order is subject to review in accordance with s. 136(5) of the *Children Act* at the behest Probation and After Care Officer in the best interest of the child.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 15TH DAY OF JUNE 2023

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MUMBUA T. MATHEKA

JUDGE

Present Virtually

Court Assistant: Mwaiwa

The Subject

Ms. Mwalewa Probation and After Care Services

Ms. Nyakibia Prosecution Counsel

