



RWM (Suing as the Mother and Next Friend of MNK - Minor) v LKN (Miscellaneous Cause 23 of 2023) [2024] KEHC 12415 (KLR) (Family) (17 October 2024) (Ruling)

Neutral citation: [2024] KEHC 12415 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MISCELLANEOUS CAUSE 23 OF 2023
HK CHEMITEI, J
OCTOBER 17, 2024**

BETWEEN

RWM (SUING AS THE MOTHER AND NEXT FRIEND OF MNK - MINOR) APPLICANT

AND

LKN RESPONDENT

RULING

1. This ruling relates to the application dated 15th November, 2023 filed by the Applicant RWM, seeking for orders that:-
 - a) Spent.
 - b) This honourable court be pleased to stay Children’s Case No. E1211 Of 2023: LKN (Suing as the next friend and Father of the Minor – Vs – RWM) pending the hearing and determination of this application.
 - c) This honourable court be pleased to withdraw and transfer Children’s Case No. E1211 Of 2023: LKN (Suing as next friend and Father of the Minor – Vs – RWM) to Nakuru Chief Magistrate Children’s Court for disposal and/or appropriate dealing.
 - d) The costs of this application be in the cause.
2. The application is supported by affidavit and supporting affidavit sworn by RWM on 16th November, 2023. She avers inter alia that she is the minor’s biological mother and the Respondent chased her away after birth forcing her to move in with her parents at Nakuru where she enrolled the minor at Crater Academy Within Nakuru County vide Admission No. 5952.



3. She depones that Milimani Law Courts Children’s Case No. E1211 Of 2023: LKN (Suing as the next friend and Father of the Minor) -Vs- RWM ought to have been filed at Nakuru Children’s Court where the minor resides and goes to school.
4. The application is opposed vide replying affidavit sworn by LKN on 11th December, 2023. He avers inter alia that the Applicant moved out of their home when the minor was 3 years old when their relationship broke down and it was not true that he chased her away.
5. That they event signed a parental responsibility agreement dated 23rd February, 2023.
6. The Applicant relocated to and lives in the United Kingdom and moved the minor to Nakuru and Subukia without his consent. The minor lives with the Applicant’s sister at Nakuru during the school term and with her parents at Subukia during the school holidays.
7. He avers that he filed the case at Nairobi because that is where he lives and the minor is not required to attend court. Further, if there is any testimony to be given, it can be done virtually. The last time he saw the minor was on 5th March, 2023 when the Applicant was still in the country. Transferring the matter to Nakuru therefore will result in delay of the lower court matter which is not in the best interests of the minor.
8. The instant application was a delaying tactic by the Applicant because she does not want to obey the consent orders dated 2nd November, 2023.
9. The Applicant have filed written submissions dated 5th January, 2024 placing reliance on the following:-
 - 1) Section 18 of the [Civil Procedure Act](#) which clothes this court with jurisdiction to withdraw and transfer a case filed in a subordinate court to another competent court or to itself for trial or disposal.
 - 2) Section 15 (a) of the [Civil Procedure Act](#) which provides, “Subject to the limitations aforesaid, every suit shall be instituted in a court within the local limits whose jurisdiction the defendant or each of the defendants (where there are more than one) at the time of the commencement of the suit, actually and voluntarily resides or carries on business, or personally works for gain.”
 - 3) Section 8 (2) of the [Children Act](#), 2022 which provides, “All judicial and administrative institutions, and all persons acting in the name of such institutions when exercising any powers conferred under this Act or any other written law, shall treat the interests of the child as the first and paramount consideration to the extent that is consistent with adopting a course of action calculated to:
 - a. Safeguard and promote the rights and welfare of the child;
 - b. Conserve and promote the welfare of the child; and
 - c. Secure for the child such guidance and correction as is necessary for the welfare of the child, and in the public interest.”
 - 4) JMK VS ANJN [2017] eKLR where the court stated: “While exercising its discretion set out in Section 18 of the [Civil Procedure Act](#), the Court will be mindful of the balances of convenience, questions of expense, interests of justice and possibilities of undue hardship that may be occasioned to the parties... Further and most fundamentally, the suit involves a child. The best interests of the said child are of paramount importance and supersede the rights and interests of the parties herein. While the court appreciates the frustration of the Respondent, it is



nevertheless bound by the paramountcy principle enshrined in *the Constitution* of Kenya, 2010 and the *Children Act*. Article 45 (3) of *the Constitution* provides: “A child’s best interests are of paramount importance in every matter concerning the child. Having taken into consideration the questions of expense, interests of justice and possibilities of undue hardship on both the Applicant and the child, I am satisfied that the Applicant has made a strong case for the transfer of the suit. The balance of convenience tilts in favor of the Applicant. The suit ought to have been instituted at the place where the Applicant can defend the same without undue trouble. It is also the view of this Court that the continuation of the suit in Mombasa will go against the principle of safeguarding and promoting the welfare of the child. Therefore, I determine that the best interest forum for resolution of the suit would be Nairobi.”

10. The Respondent has filed written submissions dated 21st February, 2024 placing reliance of the following:-
 - 1) Nicholas Kiptoo Arap Korir Salat v. Independent Electoral and Boundaries Commission & 7 others [2014] eKLR where the Supreme Court laid down the principles that govern the exercise of discretion in applications for extension of time as follows:-
 - i. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the court.
 - ii. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court.
 - iii. Whether the court should exercise the discretion to extend time, is a case to case basis.
 - iv. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court.
 - v. Whether there will be any prejudice suffered by the Respondents if the extension is granted.
 - vi. Whether the application has been brought without undue delay.”
 2. Section 79G of the *Civil Procedure Act* (supra).
 3. *George Mwende Muthoni vs. Mama Day Nursery and Primary School, Nyeri C. A. No. 4 of 2014* where an extension of time was declined on account of the Applicant’s failure to explain a delay of 20 months.
 4. Susan Ogutu Oloo & 2others v. Doris Odindo Omolo (2019 eKLR where the court held as follows: “A party who seeks extension of time has the burden of laying a basis to the satisfaction of the court. Of paramount importance, the reason for delay must be explained to the satisfaction of the court. Further, the application for extension must be brought without undue delay and it must be demonstrated if the Respondent will not suffer prejudice if extension is granted.”
 5. Andrew Kiplagat Chemaringo v. Paul Kipkorir Kibet [2018] eKLR where the court stated as follows: “The law does not set out any minimum and maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of discretionary favour. There has to be valid and clear reasons upon which discretion can be favorably exercisable.”



Analysis and Determination

11. I have carefully considered the application before the court the parties responses and submissions and the cited authorities. The main issue is Whether the proceedings in Nairobi MCCC/E1211/ 2023 should be transferred to Nakuru for hearing and determination.
12. Looking at the response by the Respondent I simply conclude that the Applicant is the author of her own cause. I state so for the reasons that it appears from the history of the matter that the child was schooling at Consolata school until she decided to move her to Nakuru to stay with her parents so as to allow her relocate to Britain.
13. Secondly, the parental responsibility was signed at Kikuyu Children’s office and how the child ended up in Nakuru was her own volition. She had the choice of continuing with the matter here at Nairobi.
14. In my view her determination to have the matter transferred to Nakuru is simply to punish the Respondent and not in the interest of the minor. In any case and as rightly put by the Respondent what is necessary herein is the presence of the two parties and not the child. If the court thinks that the child is necessary then it can make a special direction.
15. For now, and considering that the Applicant is in fact out of this court’s jurisdiction and the child is comfortable in Nakuru at the Applicant’s relatives home let the matter proceed in Nairobi. There is absolutely no prejudice to be suffered by the child, the Applicant and or her relatives.
16. At any rate with virtual systems in place any trial can still be conducted in the absence of the Applicant physically.
17. The application is otherwise dismissed with no order as to costs.

DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAIROBI THIS 17TH DAY OF OCTOBER 2024.

H K CHEMITEI

JUDGE

