



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION
CIVIL APPEAL CAUSE 99 OF 2015
(CHILDREN COURT CASE 158 OF 2015)

K.M.M. APPELLANT/APPLICANT

VERSUS

J. I. L.....RESPONDENT

RULING

PLEADINGS

By the Notice of Motion filed on 2nd October, 2015 brought under **sections 3, 3A & 80 of Civil Procedure Act, Order 22 Rule 22, Order 42 Rule 6, Order 50 rule 1 and Order 51 rule 1 of Civil Procedure Rules 2010, Article 53 (2) of the Constitution; Sections 4, 23, 24, 76, 81, 82, 83, 87, 88, 97 and 98 of children's Act 2001** and all enabling provisions of law; the Appellant sought from this Court the following orders;

- a) Pending hearing and determination of this application and appeal to the Ruling from the Children's Court delivered on 21st September, 2015 by Hon. Munyi (SRM), this Court grants stay of execution of the said court orders.
- b) Pending hearing and determination of the application and appeal, this Court grants the Appellant interim custody, care and control of the minor A.M.
- c) The Court may grant any other orders necessary in the best interests of the minor.

The Appellant annexed the memorandum of appeal and the certified copy of the Children Court Ruling of 21st September 2015 and in a nutshell sought that the Court orders be set aside and the Appellant granted interim physical custody of the child A.M. until hearing and determination of the case No 158 of 2015 in the Children Court.

The Appellant's grounds for the Notice of Motion application are as follows;

- a) The Children's Court Ruling of 21st September 2015 granted the Respondent physical custody, care and control of the minor.

- b) This is a final order was issued at the interlocutory stage; it is not in the best interests of the child as this will destabilize him from the environment that he is accustomed to;
- c) The child is enrolled in [particulars withheld] Montessori House since August 2014
- d) The Court order amounts to the Respondent taking the child to Dubai outside the Court's jurisdiction; with no measures to ensure compliance
- e) If the Court's Ruling is executed, the appeal shall be rendered nugatory and the best interests of the child shall be prejudiced.

The Applicant filed the matter in the Children Court as he learnt of the Respondent's intention to relocate the child to Dubai without informing or consulting him.

The Applicant has had actual custody control and care of the child since August 2014 when the Respondent voluntarily brought the child to him. He enrolled the child in kindergarten and provided him with a stable home. The Respondent has enjoyed unlimited access to the child.

Earlier the Respondent brought him the child in Canada where he resided and he took care of the child for 5 months.

The Court order requiring the minor to relocate to Dubai with his mother is not in the best interests of the child; it will destabilize his environment; the family members he now interacts with; step mother, stepsister, grandparents and other relatives. More so, the children he interacts with in school. The Court was biased against him and the orders are not financially implementable.

On 28th October 2015, the Respondent filed the Replying Affidavit and objected to the stay of execution application pending appeal. She had custody, care and control of the child since birth up to the time the child attained 3 years old. She has always sought the child's best interests by safeguarding his right to interact with both parents. In September 2012 she took the child to the Appellant in Canada and left him with his father for 4 months.

In August 2014, she released the child to the Applicant to attend school in Kenya as there no formal schools for children less than 4 years. The Applicant lived with her sister and her relatives. She employed a nanny to take care of the child while in Kenya.

Matters took a dramatic turn in February 2015; her access to the child was curtailed. The Applicant served her with interim orders barring her from leaving the country with the child. The nanny was sacked and the child's phone was put off. She felt harassed and frustrated as she was hindered access to the child.

The Respondent sought orders of physical custody, control and care of the child. She has enrolled him in school in Dubai. She will ensure that the father has contact and interaction with the child. The Court should not grant stay of execution of the Children Court orders.

On 30th October 2015, the Applicant filed a Further Affidavit, he denied that he lived with the Respondent's sister; he rented her quarters as she left to the UK and lived with the child and nanny. He employed the nanny and paid for papers to allow her stay in Dubai with the child. He sacked her for not taking proper care of the child.

The Applicant stated the Respondent's work as Airline staff prevents her from spending ample time with the child. He demonstrated the times the Respondent had the child compared to the child being with her sister, parents and nanny.

On 6th November 2015 the Respondent filed a further affidavit; she reiterated that on 11th May 2015 men harassed her and her attempts to see her child were curtailed. She reported the incident to the Police Station. She confirmed she found a school for the child in Dubai, the Appellant as Canadian National will

access Dubai without applying for a visa, she will continue to avail the child to his father on holidays as before. She will facilitate discounted air tickets to allow the Applicant visit the child in Dubai.

SUBMISSIONS

The Applicant filed written submissions on 4th November 2015 and 17th November 2015. Through learned Counsel Ms. Ngigi; the Applicant sought the Court to grant stay of execution of the Children Court orders and allow the Applicant interim custody, control and care of the child pending hearing and determination of the appeal and the main suit in Children Court for the following reasons;

- a) The orders will destabilize and disorient the child in relocating him from Kenya to Dubai from family and school environment.
- b) The child's school improved capacity will be adversely impacted.
- c) Education in Dubai is expensive and the Respondent has not confirmed that she can shoulder the same singlehandedly
- d) The respondent being an International Flight attendant does not have sufficient time to attend to the child
- e) The child will be out of the Court's jurisdiction and the Court cannot supervise or ensure compliance of orders over the child.

Counsel relied on the following cases;

1. HIGH COURT CIVIL APPEAL 21 OF 2009

M.O. VERSUS R.O.O.

The Court held that;

“In the circumstances of this case application, this Court has determined that the best interest of the child shall constitute in the child not to be destabilized from the he is currently living in. This environment includes where the child is sheltered and is educated. ”

In CIVIL APPEAL 87 OF 2015

FRANCESCA FRANCIS MUSHI VERSUS DR, AZIZ OCHIENG ABDALLAH; the Court observed;

“Considering that the children have just recently been uprooted from their school and familiar surroundings and relocate to Malawi; it cannot be in their best interest to be subjected to such an upheaval the second time and be uprooted again from a school and environment just as they have settled in , when it is not certain which way the final outcome of the matter may go.”

This reinforces the position that the child in the instant case remains with the Appellant until hearing and determination of the appeal.

The Appellant relied on;

HIGH COURT CIVIL APPEAL 62 OF 2006 (ELDORET)

MATTHEW & EZEKIEL CHEPKWONY VERSUS PAUL KIMEI KIPRONO

“Upon consideration, I do hereby hold that the Children's court has no jurisdiction to grant an order of custody of a minor to a party who is outside the jurisdiction of the Kenyan Courts

pending the hearing of a suit relating to the Guardianship and or custody of the minor. The Court will have no means to enforce an order for the return of the minor to its jurisdiction.”

This is to confirm that the child should not be taken out of the Court’s jurisdiction as it will be difficult to get the child back to Kenya.

Counsel made reference to **Order 42 Rule 6(2) of Civil Procedure Rules 2010** on stay of execution being granted if the Court is satisfied that substantial loss may result to the Applicant, if the application is made without unreasonable delay and there is such security as the Court may order for the due performance of the decree or order.

Citing the case of;

ESTHER WANJIRU VS JACKLINE AREGE 2014 ECLR &

MARTHA NJERI WANYOIKE 7 OTHERS VERSUS PETER MACHARIA MWANGI it was held;

‘In considering the application for stay of execution, the Applicant does not necessarily need to prove that he/she has an arguable appeal.

The Court should allow parties exercise their right of appeal irrespective of its merits.’

The Respondent filed submissions on 6th November 2015 through learned Counsel Ms Kiguatha, the Respondent objected to the stay of execution on the following grounds;

- a) The Children Court considered comprehensive submissions and thorough cross- examination of the Respondent.
- b) To grant the stay of execution is to suspend the rights of the child in favor and over the Appellant’s rights and convenience
- c) The Respondent while in custody of the child allowed the Appellant access to the child. She took him to the Applicant in Canada. She allowed constant communication between the child and his father through phone and skype.
- d) She allowed the Applicant to reside with the child in Kenya to access affordable education and relate with his father.
- e) The Applicant left the Respondent on her own during her pregnancy; she persistently sought financial help as she had resigned from employment as flight attendant during pregnancy. As such she lived on handouts from well wishers. Despite the difficulties she shouldered she kept the pregnancy and after the child was born allowed the Appellant contact and access to child.
- f) The Respondent amicably agreed with the Applicant to have their child relocate to Kenya with the nanny and access affordable education.

In February 2015, the Applicant curtailed her right to access the child and had severe restrictions; she was restrained from travelling with the child to Dubai, the phone and skype communication was hindered, the nanny was sacked, she was harassed by armed security guards and her lawyer was instructed she would not be allowed in the residence and if she did there would be harassment.

The Respondent relied on;

Article 2(6) Constitution of Kenya on applicability of international instruments and standards as part of Kenyan Law

Article 27 Constitution of Kenya on non-discrimination of any person, parent or child

Article 53 (2) of Constitution of Kenya on the best interests of the child being paramount in every matter concerning a child;

Section 4(3) Children Act 2001 states;

*‘All judicial and administrative institutions and all persons.... Shall treat the interests of the child first and paramount consideration to the extent that this is consistent with adopting a course of action calculated to; Safeguard and promote the rights and welfare of the child
Conserve and promote the welfare of the child*

Secure for the child such guidance and correction as is necessary for the welfare of the child.’

Section 6(1) of the Children Act 2001;

‘A child shall have a right to live with and be cared for by his parents.

Article 3 of United Nations Convention on the Rights of the Child (UNCRC) prescribes that in all actions concerning the child, the best interests of the child shall be primary consideration

Article 9(3) of UNCRC which provides that States shall respect the right of the child separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except contrary to the best interests of the child

Article 10 of UNCRC states that Applications by the child, his or her parents to enter or leave a state party for State Parties shall deal with purpose of family reunification in a positive humane and expeditious manner

Article 18 of UNCRC provides State Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child.

Article 4 of African Charter on Rights and Welfare of the Child (ACRWC) prescribes best interests of the child in all actions by a person or authority shall be primary consideration.

Article 19 of ACWRC stipulates; every child is entitled to parental care and protection and shall whenever possible reside with his or her parents.

Every child who is separated from one or both parents shall have the right to maintain personal relations and direct contact with both parents on a regular basis

Article 20 of the African Charter on Rights and Welfare of the Child provides for parental responsibilities;

Parents or other persons responsible for the child have the primary responsibility of upbringing and development of the child and have the duty to ensure that the best interests of the child are their basic concern at all times.....’

The Respondent through Counsel relied on the case of;

HIGH COURT CIVIL APPEAL 76 OF 2012 (NAIROBI)

B.K.C. VERSUS B.C.S.

The Court held that in considering the requirements of stay of execution application under Order 42 Rule

6(2) CPR 2010 I matters related to children; The Court ought to take into account Section 4(3) of Children Act 2001.

Section 4(3) of the Children Act in my view triumphs over Order 42 Rule 6 (2); the best interests of the child.

The stay of execution of application where a child is conceived should be determined on the best interest of the child.

ISSUES

1. Should the Court grant stay of execution of the Children's Court orders of 21st September 2015 pending hearing and determination of the appeal?
2. In ensuring the best interests of the child are paramount; should the child remain in the present stable environment with the Applicant or should he is in the custody of the Respondent?

EVALUATION

This is an application for stay of execution pending appeal as underscored by the memorandum of appeal attached to the application.

Oder 42 Rule 6 (2) Civil Procedure Rules 2010 prescribes that stay of execution shall be granted where the Court is satisfied that substantial loss may remit to the Appellant unless the order is made;

The Applicant files the application without unreasonable delay and provides such security as the Court orders for due performance of such decree.

In the instant case, the Children Court orders were issued on 21st September 2015. The present application was filed on 2nd October 2015; 2 weeks later which is not unreasonable taking into account the receipt of the Court Ruling from the Children Court coupled with adequate preparation of the pleadings.

The next issue is whether the stay of execution should be granted or not based on the circumstances of this case.

The applicant posits that execution of the Children Court orders would adversely affect the child, as it would amount to uprooting the child from stable and conducive environment with the Applicant's family and school community. This would not be in the best interests of the child. Secondly, the execution of the orders would have the child removed from the Court's jurisdiction, as the child would reside in Dubai where his mother works. The Court would not be able to supervise and ensure compliance of its orders over the child. The appeal would be prejudiced and rendered nugatory.

The Court has focused on the vast legal provisions on the rights of a child as ably outlined by Counsel on behalf of both parties.

The relevant law on custody is as contained in **Article 53 (1) & (2) Constitution of Kenya and Section 4 (3) of Children Act 2001** focus on the best interest of the child as paramount in any matter regarding a child [ren]. **Sections 23, 24, 25, 26 & 27 of the Children Act 2001** prescribe shared parental responsibility to the child [ren]. The principles applied in awarding custody orders are contained in **Sections 82, 83, 84 & 85 of the Children Act 2001.**

Section 24 (3) of the Children Act 2001 provides;

'Where a child's father and mother were not married to each other at the time of the child's

birth and have not subsequently married each other-

(a) The mother shall have parental responsibility at the first instance;

(b) The father shall subsequently acquire parental responsibility for the child in accordance with the provisions of section 25.”

At the International level, the legal instruments on rights of the Child, the International Convention on Rights of the Child (UNCRC) and the African Charter on Rights and Welfare of the Child (ACRWC) focus on child's best interests, welfare and considerations as paramount. Secondly, both parents of the Child shall contact, access and interact with the child irrespective of whether parents are married or not or if they reside in different states for purposes of the child's upbringing and development. The member states are obligated to facilitate an expeditious process for the parent to contact access and interact with the child.

All these provisions confirm that the prevailing issue is what is in the best interest of the child. The issue is who is best placed to ensure the best interests of the child?

In the instant case from the evidence on record the Applicant and Respondent, parents of the Child have jointly fully participated in the upbringing and development of the child in Canada, Dubai and Kenya.

However, since February 2015, there has been dispute as to who should have physical custody of the child. In 2014, the Applicant and Respondent mutually agreed that the Applicant would have the child in Kenya to attend Pre School as such facilities are not available in Dubai. The Applicant did so, the child was enrolled in [particulars withheld] Montessori House and the Respondent has been visiting the child, which according to her has become increasingly difficult culminating with the incident of 11th May 2015. She alleged that she was manhandled when she went to the Applicant's residence and she reported the matter to the Police Station. The Applicant stated he had no objection to the Respondent accessing their child but objected to invasion of privacy to his family.

The Applicant objects to release of the child to his mother as she planned to have the child back to Dubai without consulting and informing him. The child is well settled with his family and in school. The Respondent's job does leave her with ample time to care for the child. Education is expensive in Dubai and even access to the child will be more expensive. The Applicant is apprehensive that the Respondent is in a relationship with a Nigerian and the child may be relocated to Nigeria.

It is settled law that a child of tender years' best interests and welfare are where legal custody is awarded to the mother barring extenuating circumstances that would prevent the mother from providing protection and care of the child. Case law lends credence to the proposition that in cases of a child of tender years less than 10 years as defined under **Section 2(1) of the Children Act 2001**, custody is granted to the mother.

In *KARANU vs. KARANU (1975) E.A. 188 Court of Appeal* observed;

“ The substantial question in this appeal is whether or not the judge was right in giving custody of the children to the father. At the time the Application was heard, the daughter of the parties was just over 7 years of age and the son was 6 years old. The Judge correctly directed himself that in cases of this nature, the paramount consideration was the welfare of the children but he did not specifically refer to the generally accepted rule that, in the absence of exceptional circumstances, the custody of young children should be given to the mother”

In *GITHUNGURI vs. GITHUNGURI IKAR 9* the Court stated;

“ the prima facie rule (which is now quite clearly settled) is that other things being equal, children of this tender age should be with their mother, and where a Court gives custody of this tender child to the father, it is incumbent on it to make sure that there are really sufficient

reasons to exclude the prima facie rule....

I realize that as a general rule it is better for the little girls to be brought up by their mother.”

In SOSPETER OJAAMONG vs. LYNETTE AMONDI OTIENO Civil Appeal 176 of 2006

The Court of Appeal held;

“The general principle of law is that custody of such children should be awarded to the mother unless special and peculiar circumstances exist to disqualify her from being awarded custody. The case of MARTHA OLELA & ANOTHER vs. JACKSON OBIERA Civil Application No. Nairobi 16 of 1979 was cited as one authority for such principle. The mother’s disgraceful conduct, say her immoral behavior, drunken habit, bad company are some of the factors which would disqualify her from being awarded custody of a child of tender age.”

In HIGH COURT CIVIL APPEAL NO 21 OF 2009;

M.A. VERSUS R.O.O. cited by the Respondent; in a similar fact situation as the present case; the Court at Page 3 alluded to the following guiding principle;

“In Kenya, it has been accepted by the Courts that the custody of a child of young and tender years (defined in Section 2 of the Children Act to mean a child of young and tender years and below) ought to be with the mother unless there are compelling reasons for the said custody to be removed from the mother and given to the father. However, this will be subject to the best interest of the child.”

Further on, the Court stated;

“This Court agrees with the Respondent that his right as the biological father of the child should not in the circumstances be ignored. However, such right shall be subject to what constitutes the best interest of the child. As an adult, the right of the Respondent as the father of the child cannot be considered to be paramount importance to that of the best interest of the child.”

These cases confirm a child of tender years should be with the mother. A parent, especially the resident parent is key to development and growth of the child (ren). Apart from being natural progenitors of the children, the parent (s) provide the social and psychological development of the children. At the initial stage, they, he or she provides the basic necessities of feeding, nurturing, comforting and loving the child (ren) and later at a more sophisticated level, their role is provision of guiding, socializing, protecting, educating and mentoring the children.

In the instant case, from the pleadings, the mother of the child has been with the child since birth. During pregnancy she lost her job and relied on handouts from friends and family. Despite hardships she kept the pregnancy of the child to birth. The Respondent took the child to the Applicant in Canada for 4-5 months as she was employed as an international flight attendant. She got the child back and in 2014, they both agreed the child should come and go to Pre-school in Kenya. It is the child’s formal education and residence that the parents have not been able to reach an amicable settlement.

This Court relying on the legal provisions finds that temporary custody of the child pending hearing and determination of the appeal and the best interests of the child shall be with the mother of the child the Respondent.

There’s no evidence of compelling reasons to have the child taken away from his mother, she is not violent, has not neglected the child or is said to have bad or immoral behavior or any other such circumstances.

The impression this Court formed from the pleadings and exhibits, is that the Respondent has maintained contact, access and interaction of the child and his father, the Applicant from when he was in Canada, herself in Dubai and the Respondent in Kenya.

Infact she amicably agreed to release the child to the Father's care in Kenya for the child to undertake pre-school education in Kenya. She continued to visit the child.

The issue of the Respondent not being able to attend to the child due to her working schedule and travel, as an inflight attendant is not borne out by evidence. Most mothers are working mothers with 30 days' leave annually, but they make time to attend to their children. The Respondent attached her schedule to confirm that it is adjustable and she will have more time with the child. It would be discriminatory to take away the child from the Respondent merely by virtue of the kind of job she has without cogent evidence of neglect. To allay any fear of the child being neglected, this Court shall allow the Applicant visits during the child's term pending the appeal.

The issue of financial contribution and expensive education of the child in Dubai is an issue that this Court cannot comment on due to lack of evidence of each party's resources and obligations. For the time being the current arrangements shall continue until such evidence is provided for the Court to make an informed decision.

The Issue of the Respondent having the child taken care of by sisters, parents and the Applicant at different stages of the child's life is not sufficient evidence of neglect and destabilizing the child. Instead, the chronology of events as stipulated in paragraph 21 of the affidavit filed on 30th October 2015 is one that depicts that the Respondent was struggling to secure and retain her new job through mandatory training and she had the child taken care of by family members she trusted and counted on including the Applicant. This job is key to her providing best interest of the child, food, shelter, clothing, education and conducive environment for his growth and development.

The next issue raised is that if the Respondent has custody pending appeal, the appeal will be rendered nugatory and the same will be prejudiced as she will have the child in Dubai. The child's best interests will not be fulfilled as it will amount to uprooting the child from one family setting to another setting.

The Applicant cited the case of **FRANCISCA FRANCIS MUSHI VERSUS DR AZIZ OCHIENG ABDALLAH** where the Court held;

“Considering that the children have just recently been uprooted from their school and familiar surrounding and relocated to Malawi, it cannot be in their best interest to be subjected to such an upheaval a second time... when it is not certain which way the final outcome of the matter may go.”

The facts of the cited case are different from the present case; there is a divorce dispute intertwined with custody and the issue who of the parents should have the children and where they will reside, Kenya, Tanzania or Malawi. The parties were or are married and have equal parental responsibility envisaged in **Section 24 of the Children Act ,2001**. There are multiple issues, which should await hearing and determination of the matter in Kenya or Malawi.

In the instant case the parents of the child are not married. There is one main issue the legal and physical custody of the child and if the child should relocate with the mother to Dubai or reside in Kenya with the father.

The appeal will not be prejudiced, as the temporary custody of the child to the mother is conditional to obeying Court orders. The Respondent has demonstrated that despite everything she has facilitated the child being with the father.

The evidence on record confirms that the Respondent has been amenable to sharing parental responsibility with the Applicant. The email dated 1st March 2015 from the Respondent to the Applicant

marked JIL-4 confirms that the Respondent informed and consulted the Applicant on the child's relocation to Dubai. She was amenable to sharing custody in terms of visits and holidays. The Respondent will abide with Court orders and therefore the outcome of the appeal. She has taken the child to the Applicant in Canada and given him the child to bring to Kenya without Court orders.

Further, the above -cited international instruments' provisions obligate member states to facilitate expeditious processes for parents to access and interact with the child [ren]. This Court finds that the appeal is not compromised or prejudiced due to the above legal safeguards.

In the meantime; it is in the child's best interest to have the child with the natural and biological mother than with the step -family. This arrangement will also facilitate the Applicant's right to privacy with the family and discard the tension and acrimony when the Respondent visits the child.

COURT ORDERS

The Court orders as follows;

- 1. The Court uphold the Ruling of the Children Court of 21st September, 2015 as follows but subject to certain amendments as follows;**
- 2. Under Article 53 (1) & (2) Constitution of Kenya 2010 Section 4(3) & 24 (3) of the Children Act 2001; The Applicant and Respondent shall have joint legal custody of the minor A.M.**
- 3. Guided by the best interest of the child, the Respondent, mother of the child shall have temporary physical custody, care and control of the minor in Dubai pending hearing and determination of the appeal; as she is still working and the employment is to facilitate sustenance of the child.**
- 4. The temporary custody of the child to the Respondent shall be conditional to; serving this Court orders to the Foreign Affairs Office, Nairobi and Kenya High Commission in Dubai to facilitate visits of the child to the Applicant his father in Kenya during school holidays, visits by the child's father to Dubai and any changes based on the outcome of the Appeal.**
- 5. Any party without the order of this Court shall not be allowed to relocate the child to Nigeria or Canada.**
- 6. The Respondent shall provide 2 Kenyan sureties of 2 million shillings each in Kenya in the Children Court before the child is released to her.**
- 7. To comply with Article 53(1)(e) of the Constitution of Kenya 2010, the Applicant is shall have unrestricted access to Dubai while in Dubai provided parties through their lawyers make prior arrangements.**
- 8. The Applicant shall during the interim period pending appeal have the child with him and his family in Kenya on each school holiday up to the last week before school opens so as to have the child prepared for school in Dubai.**
- 9. The Respondent by virtue of her employment and having admitted to discounted flight tickets; she shall facilitate the child's travel to and from Kenya to Dubai during holidays.**
- 10. The parent who has custody of the child at a particular time, shall facilitate communication of the child with the other parent**
- 11. The Parties to continue with current maintenance arrangements pending filing affidavit of means to facilitate the Court determine the same on appeal.**

12. The Applicant to take necessary steps to have the appeal heard and determined.

13. Each party is at liberty to apply

14. The matter being a family matter each party to bear own costs.

DELIVERED AND SIGNED IN OPEN COURT AT NAIROBI THIS 8TH FEBRUARY 2016

M.W.MUIGAI

JUDGE

In the presence of;

Ms. Ngigi for the Applicant/Appellant

Ms. Kiguatha for the Respondent

Ms. NGIGI: We seek stay execution of the Court orders of 8th February 2016.

COURT: The application for stay of execution is denied as these orders are interim orders pending appeal by the Appellant being heard and determined.

M.W.MUIGAI

JUDGE

Ms. NGIGI: There are new developments we have a hearing date for the main suit. We want the matter be heard in the Children's Court interpartes on 21st April, 2016. We seek stay of execution pending hearing and determination of the main suit.

Ms. KIGUATHA: I am opposing both applications of the Appellant as what they are asking if this Court can suspend the rights of the child.

COURT: The Court ruling is on the basis of the **Law; Section 24(3)(a) of the Children Act 2001** that when the parents are not married the mother has priority over the child than the father.

No stay of execution is granted.

Mr. NGIGI: We are seeking certified copies of the Ruling.

COURT: The Appellant and Respondent to be provided with certified copies of the Ruling of this Court immediately.

M.W.MUIGAI

JUDGE