

REPUBLIC OF KENYA

IN THE HIGH COURT

AT MALINDI

MISCELLANEOUS CIVIL SUIT NO. 12 OF 2014

J K APPLICANT

VERSUS

H S M..... RESPONDENT

RULING

1. This morning as I prepared my ruling in this matter, a report dated May, 15th 2014 authored by James Chebon, Children officer, Kisauni was placed before me. The report is gratuitous as this court has not made any order requesting for the same. As such I requested the court clerk Samwel, to summon the officer who had presented it. One Anwar Suleiman a Children's Officer Kisauni presented himself before me and was unable to explain why the office deemed it necessary to write a report to this court which is not even seized of the custody matter. The officer was sternly warned to desist from such conduct in the future.

2. The conduct described above rightly or wrongly only lends credence to the respondent's complaint that certain children officers in Mombasa where the applicant wants the Lower Court matter transferred are not neutral. Secondly it amounts to an attempt to influence this court's decision and borders on contempt by court.

3. Turning to the application before me, the sole reason for the transfer sought by the applicant is ostensibly interest of the minors who are now resident in Mombasa after a brief sojourn in Malindi. My view is that whether the children are in Mombasa or Malindi any appearance before the Lower Court if necessary would disrupt their studies. The respondent says she fears prejudice if the application is allowed. Ordinarily, I would expect that the Lower Court would be sensitive to circumstances of minor school-going children and only require their attendance when it is absolutely necessary, to ensure minimal disruption not only of their studies but also their social routine and mental stability.

4. As far as I can see at the moment, the most urgent and pertinent issue relating to the welfare of the minors is the speedy determination of their custody and provision of their needs. The sooner the suit in the Lower Court is heard and determined the better. I will therefore direct that the hearing before the Lower Court scheduled for 25th June, 2014 be expedited.

5. The application for transfer of the Lower Court suit, Children Case No. 7 of 2013 to Mombasa is therefore denied. Costs to be borne by the applicant.

Delivered and signed at Malindi this **9th** day of **June, 2014** in the presence of: the applicant (in person), Mr. Mwadilo holding brief for Mr. Gicharu for the respondent. Court clerk Samwel

C. W. Meoli

JUDGE