



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

CIVIL SUIT NO. 807 OF 2008

**IN THE MATTER OF AN APPLICATION UNDER SECTION 65 OF THE
CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF PROCEEDINGS BEFORE THE CHIEF MAGISTRATE'S COURT
IN NAIROBI**

CHILDREN'S CASE NO. 483 OF 2008

BETWEEN

D K K.....APPLICANT/RESPONDENT

AND

SENIOR RESIDENT MAGISTRATE

NAIROBI CHILDREN COURT.....RESPONDENT

R M K.....INTERESTED PARTY/APPLICANT

RULING

1. D K (the respondent) and R M K (the applicant) are a married couple. In 2006 they went to the High Court at Kisumu and adopted two children, Baby C and Baby S, in **Adoption Cases Nos. 77 of 2006** and **78 of 2006**, respectively. The respondent filed an application in either case to set aside the adoption order. On 5th February 2009 the adoption files were ordered to be transferred to Nairobi in the instant case. The two applications were subsequently heard and on 8th December 2011 dismissed with costs.
2. In 2008, the applicant filed in the Children's Court at **Nairobi Case No. 483 of 2008** seeking to have the respondent to pay fees in respect of their children. Orders were made which were apparently not obeyed. The applicant took out a notice to show cause why there should be no execution. It was at that point that this court issued stay of the orders and ordered that the file be transferred to itself for further orders.

3. On 22nd November 2013 the applicant filed the present motion seeking an order that the respondent do pay fees and all school related expenses in respect of the children and further reimburse her all the payments towards fees and school related expenses since 2008 and thereafter to continue to pay fees and related expenses for the children. The second prayer was that the court varies and or sets aside the consent order No. 1 made on 5th February 2009 and transfer the **Children's Case No. 483 of 2008** back to the Children's Court at Nairobi for hearing and determination and, in the meantime, the respondent to pay fees and related expenses in respect of the children and to reimburse what had been paid since 2008. The application was on the grounds that the respondent had refused to take up parental responsibility over the children and had instead frustrated the orders of the Children's Court to have him pay fees for the children; that the proper court to hear and determine matters relating to the payments of fees and further up keep for the children was the Children's Court, hence the request that **Case No. 483 of 2008** be returned to the Children's Court; and that in any case, **Case No. 483 of 2008** had been ordered to be brought to this court only for the purpose of challenging the adoption orders that had been issued by the High Court at Kisumu.
4. The application was opposed by the respondent who stated that he had not failed to take up parental responsibility over the children; that he had, in any case, challenged that responsibility in a pending matter; he had not refused to pay fees; an order had been issued on 20th October 2011 directing the parties to agree on a school for the children but that the applicant had, instead, unilaterally taken the children to an expensive school whose fees he could not afford to pay; and that he could not be asked to participate in the payment of fees of children whose adoption he had not taken part in.
5. This court has since found that the children were properly adopted by the applicant and the respondent as a couple. And therefore their responsibility over the children is governed by the provisions of the **Children Act (Cap. 141)** and the Constitution of Kenya 2010. The issue of adoption can only be challenged on appeal, and not in this application.
6. I agree with the applicant that the **Children Act** that came into force in 2002 is the special legislation governing children-related matters. These matters include parental responsibility, custody and maintenance. This Court may have unlimited original jurisdiction in civil and criminal matters under **Article 164(3)(a)** of the Constitution of Kenya 2010, but in this case the **Children Act** has been specifically legislated under the Constitution to provide a specialised forum to resolve Children matters and it is only when a party is aggrieved by the decision of the Children's Court that he can come to this Court on appeal (*VIOLET KEDOGO KIHARANGWA V PRESTON NGIRA OBADIA, High Court at Nairobi Petition No. 339 of 2011* and *J.A.O. V C.G.M and another [2003]eKLR*). In my view, this Court asked for the **Children's Court file No. 483 of 2008** because of the application that had challenged the adoption of the children in respect of whom the issue of their fees was pending in the subordinate court. This court was not asking for the file in order to hear and determine issues relating to the payment of fees, or school related payments. This is my understanding of the consent order that was issued on 22nd April 2009. The consent order served its purpose when the applications challenging the adoptions were heard and determined.
7. The result is that prayer 2 in the motion filed on 22nd November 2013 by the applicant cannot be granted for want of jurisdiction. Instead, the **Children's Case No. 483 of 2008** is returned to the Children's Court at Nairobi for hearing and disposal. In the particular circumstances of this case, I ask that the respondent pays costs of this application.

DATED and DELIVERED at NAIROBI this 6th day of November, 2014.

A.O. MUCHELULE

JUDGE