

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

CIVIL APPEAL 84 OF 2012

JOSEPH GITAU KINYANJUI APPELLANT

VERSUS

JACKLINE ATIENO RESPONDENT

(An appeal against orders and decisions of Hon. Magistrates J. Gandani, PM and Hon. E. Michieka, RM in Children’s Case No. 415 of 2010 at Tononoka Children’s Court – Mombasa)

RULING

(1) The Applicant/Intending Appellant seeks extension of time to file an appeal against the orders of the Children Court of 21st February 2011 and 2nd December 2011 in Children’s Case No. 415 of 2010 and the appeal dated 16th May 2012 herein be deemed to be properly filed within time.

(2) The principal complaint of the Appellant is that there was no fair hearing before the Children’s Court in that he was ordered by the court to pay interim maintenance of Kshs.3,000/= per month with effect from 28th February 2011 and to undergo DNA testing at a private clinic Pathcare Kenya Ltd which confirmed him as the biological father of the child the subject of the proceedings. He claims to have been lured by the Respondent in to sexual intercourse on 15th October 2009 when she was already pregnant with the child whom she delivered on 23rd June 2010. The Intending Appellant does not state what prevented him from lodging his appeal within the time prescribed.

(3) The Respondent filed a replying affidavit on 29th June 2012 in which she objects to the application on the grounds of unexplained delay in bringing it and points out that the DNA testing was ordered by the court at the request of the Appellant, and the child was now attending school at St Ben Junior whose fees statement was attached and for whose responsibility the Appellant sought to avoid. During the hearing of the application, the Respondent in opposing the application stated that the Appellant had not paid for the maintenance since the DNA results and that she had no problems with the appellant and only sought that he paid for the child’s maintenance.

(4) I have considered the application and I find that the Applicant has not explained the delay of over one year since the order for interim maintenance and DNA testing was made on the 21st February 2011. Moreover, by his own showing in the pleadings and affidavits before the court, he had a relationship with the Respondent when he **“accommodated” her during the month of October 2009 for financial assistance as she was very sick.** He does not explain his obligation to accommodate the Respondent but asserts that he was lured into sexual [intercourse] on 15th October 2009. Then came the DNA testing which was ordered by the court to be undertaken by Pathcare Kenya Ltd in the presence of the Appellant’s advocate. I do not consider that the intending Appellant has shown that he has good reasons for the delay in presenting his appeal and or that he has an arguable case with prospects of success at the appeal. Accordingly, I decline to extend the time for lodging the appeal as sought by the Appellant. Costs in the cause.

Dated and delivered this 1st October 2012.

EDWARD M. MURIITHI
JUDGE

In the presence of:

Mr. Joseph Gitau Kinyanjui in person

Ms Jackline Atieno in Person

Miss Linda - Court Clerk