



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT ELDORET**

**MISCELLANEOUS CIVIL APPLICATION 159 OF 2007**

**LAZARUS KIRUI KIPKIRWA ..... APPLICANT**

**VERSUS**

**RUTH CHEMUTAI ENOCK ..... RESPONDENT**

**RULING**

This is an application by the Petitioner for inter alia the following orders:-

“1. ....”

2. That pursuant to the Order dated 20.12.2007 this Honourable Court be pleased to grant leave to compel the Respondent to pay for the Petitioner’s/Applicant’s medical care and treatment.

3. That in the alternative leave be granted that the Respondent be ordered to reimburse and/or off-set the medical bills from 20-2-2007 to date amounting to about Shs. 450,000/= which bills have been accumulated by the Petitioner/Applicant due to his involuntary stay in Kenya pursuant to the Orders dated 20-12-2007 and Orders dated 4-11-2008 herein.

4. That failure to the Respondent complying with Orders No. 2 and 3 above the Honourable Court be pleased to discharge the Petitioner/Applicant from further liability herein and to order that the Petitioner’s Passport deposited in Court be released to the Petitioner/Applicant to travel back to his country of origin in order further that the Petitioner does access his medical insurance cover for urgent treatment and care.”

The application is opposed by the Respondent who filed grounds of opposition.

There was no order by this Court for the Respondent to provide maintenance or medical care and treatment for the Petitioner. The said prayers are baseless and misconceived. The Petitioner has certainly misunderstood the orders of this Court for maintenance of the Respondent and the children of the marriage and to pay for their education and medical care until they are of age.

In this Court’s Judgment the Court found that:-

“The Petitioner is an irresponsible and uncaring husband and father. He was either a spoilt young man or fairly sick person who may need psychiatric treatment and counseling .....

Upon reading this application and the replying affidavit and hearing the Applicant in Court and his demeanour, this Court is even more convinced that it made the correct assessment and observations in its Judgment.

Apart from the observations of this Court, I have carefully considered the Medical Reports of Dr. Lelei dated 10.11.2008 and 12.08.06. The Petitioner suffers from sever multiple prolapsed disc rendering him complete disability. It is the professional opinion of Dr. Lelei as an Orthopaedic Surgeon specializing in that field and after he carefully review the patient's M.R.I. that the patient needs to undergo surgery to relieve some of his suffering. The doctor opined that the Petitioner be excluded from daily living activities that involve bending, carrying weights, etc.

The Petitioner has Medicare and Medical Insurance in the U.S.A. It is clear that the Petitioner is not able to afford proper medical care in Kenya where he does not reside or work for gain. He is an American citizen and is not entitled to the said insurance while outside the United States of America.

The Petitioner appears to be incapable of providing any maintenance for the Respondent and the children while he is in Kenya. He is at this stage more of a liability and of nuisance value to the Respondent and the children than a father, husband and provider.

Upon careful consideration I do not see the purpose or value in the withholding of his passport. In any case, such an order cannot be sustained indefinitely in view of the provisions of the Constitution as regard the rights to liberty and movement.

This is one case that I see that the Respondent and the children are better off without their father at this stage unless he reforms in the future and has a genuine change of heart.

This Court is of the view also that the Petitioner is in fact a danger to the Respondent and the children. This is why the Court wishes to voice its concerns about the purported consent dated 6<sup>th</sup> February, 2008 purportedly granting custody of the two children to the Petitioner. It is the view of the Court that the Petitioner is unstable and it would be risky if not dangerous for the children to be taken out of the custody of the Respondent and the jurisdiction of this Court before ascertainment of the security of the children by this Court. As a result I do hereby order a stay of the consent order entered on 7/02/08 until further Orders of this Court.

On the other hand I do hereby Order that the Petitioner's American Passport be released to him forthwith. The maintenance orders shall remain in force as per the Judgment and Orders of the Children's Court. Orders accordingly.

**DATED AND DELIVERED AT ELDORET ON THIS 2<sup>ND</sup> JUNE, 2009.**

**M. K. IBRAHIM**

**JUDGE**

**In the presence of:**

The Applicant

No appearance for the Respondent