

REPUBLIC OF KENYA

IN THE HIGH COURT AT MOMBASA

MISCELLANEOUS APPLICATION CASE NO 24 OF 1990

K.....APPLICANT

VERSUS

N.....DEFENDANT

RULING

The applicant prays for an order that he is appointed guardian of M.N – a girl aged 2 years. In the course of his submission, he stated that his intention is to have an order committing the child to his custody. The applicant was a friend to the respondent and they begot the child. It is clear that the parties are not married under any law though the applicant insisted that he paid dowry of Shs 6000/-. The respondent has categorically stated that she is not the applicant's wife and she could not agree to be married by him. There has been proceedings in the lower court in respect of the same child.

On 5/3/90, the Resident Magistrate ordered that the child be committed to the care and protection of the Respondent and ordered the respondent to exercise proper guardianship over the child. The Resident Magistrate however gave liberty to applicant to apply to the High Court to be appointed guardian of the child.

The child has the mother who is alive. The parties are not married and they are not living together. The child does not need a guardian at this age other than her mother. The child is not in school and has no property. Indeed the applicant discloses that the purpose of this application is to have an order for custody. If his intention is to have custody of the child, I regret to say that the law is not with him.

The paramount consideration is the welfare of the child. In awarding custody, the courts are guided by well-established principles. Firstly, the child is so young that in the absence of any good reasons to disentitle the mother, the child should remain in the custody of the mother. No reasons or good reasons have been given that disentitle the mother.

Further, as a rule, female children should be committed to the custody of the mother.

In the circumstances of this case, it is for the welfare of the child that at this tender age she should be looked after by the mother. The mother has already been given custody of the child by the magistrate's court.

I dismiss the application with costs to the respondent.

Dated and Delivered at Mombasa this 29th Day of June, 1990

E.M. GITHINJI

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JUDGE

