



REPUBLIC OF KENYA



KENYA LAW
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**Muriuki & 3 others v Mbuthia (Civil Appeal 43 of 2023)
[2025] KEHC 6981 (KLR) (29 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6981 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CIVIL APPEAL 43 OF 2023**

**M MUYA, J
MAY 29, 2025**

BETWEEN

**MIRIAM WAITHERA MURIUKI 1ST APPELLANT
JOSEPH MURIUKI GITHINJI 2ND APPELLANT
FLORA WANJIRU MURIUKI 3RD APPELLANT
CAROLINE NYAGUTHII MBUTHIA 4TH APPELLANT**

AND

CHARLES KARIA MBUTHIA RESPONDENT

RULING

1. The Notice of Motion of Application dated the 24th day of June, 2023 seeks the following orders:-
 1. Spent
 2. That the Honourable Court be pleased to stay execution of the ruling given on 30th May, 2023 pending the hearing and determination of the appeal in this case.
2. The grounds are as follows:-
 - a. That the ruling was delivered on 30th May, 2023 in favour of the Respondent.
 - b. That the Honourable Court ordered that the minors be handed over to the Respondent yet he had not seen them or lived with them for the last three years.
 - c. That the Respondent has a criminal record having assaulted a minor in the neighborhood and therefore cannot be entrusted with the children.



- d. That the Respondent does not provide for any basic needs and has never assumed his parental responsibility and is irresponsible therefore handing over the two children will be placing the children in great danger.
 - e. That the Applicants are the grandparents, mother and Aunty of the two children and they have lived with them and the girls have grown to be fond of them.
 - f. That there was a time the Respondent did not want to be associated with the last born child since he said it was not his child and left her when she was only 2 weeks old, therefore, handing over the child to him now will be endangering her life.
 - g. That it is evident that the Respondent can execute the ruling of the court after the schools close.
 - h. That should the ruling of the court be so executed, the children will definitely suffer since they don't even know the Respondent since the parents separated when they were very young.
 - i. That children of tender age ought to be with the mother.
 - j. That it is in the interest of justice to allow the application.
3. In his Replying Affidavit, the Respondent deposes:-
1. That he is the father of the two minors in this case. That the 4th applicant is a total stranger in this matter as she obtained custody of the minors through misleading the court.
 2. That the 1st Applicant went to Qatar without his knowledge and left the minors with the 2nd and 3rd applicants. At that time the 2nd born minor was 1 month old.
 3. That the 1st Applicant who is the mother to the minors went to Qatar under the guise of attending a one week training for an online job opportunity.
 4. That the 1st Applicant misled the court by returning to the country for one week only and returning to Qatar one week later after the ruling had been delivered.
 5. That he was given visitation rights by the court but the 2nd and 3rd applicants frustrated the courts orders by denying him access. Further that the applicants have not approached the court with clean hands.
 6. That as the biological father he was given custody of the minors by the court and the appeal is meant to frustrate him and paint him as an irresponsible father.
 7. That the 4th applicant is a total stranger to these proceedings and obtained orders fraudulently for custody of the minors whereas the biological parents of the minors are still alive.
- The Respondent deposes that it is the 1st Applicant who is irresponsible for neglecting a one month old baby by leaving it with her sister and later sending a letter giving parental authority to the 4th applicant while the biological father was still alive.

Determination And Conclusion

4. I have perused the ruling by the trial magistrate dated 30th May, 2023 which is sought to be stayed and in particular the orders of custody given to the Respondent in this case.
5. It is instructive to note that custody of the two children had been vested on the 4th Applicant Caroline Nyaguthii Muriuki who is a sister to the 1st Applicant Miriam Waithera Muriuki, the mother of the minors.



6. The reason being that the 1st Applicant had relocated to Qatar where she had gone to work and she had written a letter giving authority to her sister to be vested with custody of the children.
7. Section 102 (3) of the *Children Act* 2022 provides:-
 - “ Any of the following persons may be granted custody of a child:-
 - a. a parent
 - b. a guardian
 - c. any person who applies with the consent of a parent or guardian of a child and has had actual custody of the child for a period of three years preceding the making of the application, unless the court is satisfied on evidence that a shorter period is sufficient to justify an order made in determination of the application”
8. The learned Trial Magistrate did note that the applicant therein was the biological father of the two minors. The court did observe that although the 4th Respondent/Applicant did have consent from her sister (1st Respondent/Applicant). The 4th Respondent had stayed with the minors for about a month when she made the application for custody as opposed to the period stipulated in the act which is three years.
9. The Lower Court did observe that the Applicant/Respondent was the biological father of the two minors whereas the 4th Respondent/Applicant was an Aunt.
10. While it is noted that the two minors are girls of tender years and custody would normally be vested on the mother, the mother after she was granted custody left for another country in search of greener pastures leaving the children with her parents and her sister.
11. The father of the children is still alive and is willing to take care of his children.
12. I do not find any good reason to disturb the finding of the learned trial magistrate at this stage by ordering a stay of execution.
13. The application for stay has no merit and is disallowed. Costs in the cause.

RULING DELIVERED THIS 29TH DAY OF MAY, 2025, IN OPEN COURT.

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M. MUYA

JUDGE

