

Washington State Supreme Court

In re: Parenting of Malaika Obuon, Child,		
Wairimu Kiambuthi, Respondent,		No. Supreme Court # 95435-6 Court of Appeals # 75563-3-1
and		
Toll Obuon, Appellant,		Brief of Respondent, Wairimu Sumrell

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RCW 26.09.480 “Objection to relocation or proposed revised residential schedule.”

RCW 26.09.510 “Temporary orders.”

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CERTIFICATE OF INTERESTED PERSONS

The following listed persons have an interest in the outcome of this case. These representations are made in order that the Judge of this Court may evaluate an appeal for international travel, language inference to sexual misconduct and a parenting plan that was granted by the Honorable Judge Richard Eadie. The child to be considered is Malaika Obuon and consider the Respondent is Wairimu Sumrell, formerly, Wairimu Kiambuthi.

1. Wairimu Sumrell
2. Toll Obuon

STATEMENT OF THE ISSUES

ISSUE ONE:

The Appellants limitation to international travel with the child, Malaika, until Malaika reaches the age of 18 or the Respondent, the mother, and the father, the Appellant, can agree to such travel

ISSUE TWO:

Absentee parenting from the Appellant, the father, since June 23rd 2016, more than 20 months ago. Though the father, Toll Obuon, was granted residential time with Malaika every other weekend beginning July 27th 2016, he has made no attempt to make good on numerous promises he has made to pick Malaika up. He has also refused to call Malaika on the phone. He will repeatedly tell Malaika that he does not want either the Respondent or Matthew Sumrell (respondent's husband) to pick up the phone so he does not call. It has been left to the child to make all the phone-calls. Moreover, he has recently declined to pick up several of Malaika's phone calls over an extended period of 3 months (late November 2017-mid February 2018) because of some grievance he has been holding onto. In addition, though the Respondent has given the Appellant the correct current banks to which he can continue making child support deposits, he has not done so in the past two months.

ISSUE THREE:

Consistent and stable home life for Malaika that will allow her to flourish both in academia, in her social life and in sports. The father has shown grave negligence in the actual parenting of Malaika, and has been consumed by hostility that has not and does not allow him to communicate with the mother on any level; email or texting or phone. He hung up the phone, while Maliaka was on speaker phone in mum's car, when he found out the mother was there too.

Unfortunately, for Malaika, she did not get to see her father, Toll, in West Seattle, the appellant's neighborhood, because he could not communicate with the mother about what park they would have met at. He has made clear choices, since June 23rd 2016, to continue with an argumentative nature that was noted in the trial and that has led to his inability to parent.

ISSUE FOUR

Specific legal language in the parenting plan that gives the options of the kind of behavior from the father that scared the child. The sentence lumps the following descriptors of abuse together in one sentence: physical, emotional or sexual abuse. The inference to sexual abuse has been offensive to Toll Obuon. In the actual trial on page 337, the father, Toll Obuon, says that the mother accused him of having sex with his daughter and this has become another major bone of contention. On page 341 Judge Eadie says that no-one would read it that way except for him

FACTUAL STATEMENT OF THE CASE

Background of the Relationship and Parenting of the Minor Child

The matters at hand involves the international travel of Malaika Obuon, a 12-year-old girl. It involves the maintaining of Malaika's stable home life which has allowed her to forge the emotional stability that she is now exhibiting; she is engaged in school and is has a busy social life with friends from the neighborhood. The actual legal language used by King County Superior Court in the parenting plan extends itself to include sexual abuse. However, though this was hardly the intent of the mother, the appellant has made it a sore and sticky issue and continues to blame the mother for the inference to sexual misconduct with Malaika.

After a nearly ten-year relationship, the parents of Malaika separated in December 2012 when the respondent moved to Kenya to work for as a consultant for the World Bank. However, even prior to that time, the parties lived apart, with the respondent located in Seattle since August 2007 and the respondent remaining in New York until April 2009, where the parties initially met. Their divorce was finalized in 2014.

While the appellant, during the trial made claims that he was a good husband and father by presenting character witnesses on his behalf the facts are his parenting style which does include loud yelling in his already deep voice, is harsh and at times scary to the daughter. The relationship as it was in the marriage while rocky and difficult, should not be of any bearing in this case. The issues at hand now are what is in the best interest of the child and what facts and data exist to make that claim.

The appellant signed off on a parenting plan in 2012 that gave full custody of Malaika to the respondent to reside full time in Nairobi, Kenya. There were no provisions spelled out in the parenting plan for how or when to keep contact. The respondent in fact did live in Kenya with her daughter from December 2012 to August 2014. She returned to Seattle so Malaika could visit with her father. However, the father never came to visit and almost never called. He showed little interest in keeping in touch while Wairimu and Malaika were in Nairobi. He has often said that he does not like calling and even though the couple had shared cell phone minutes, prior to the mother and child moving to Nairobi, there was often negligible use of this on his part. Toll only showed keen interest in taking Malaika home to his family the last 14 months prior to the trial.

The change in the appellant's interest in parenting occurred when the respondent met Matthew Sumrell, began a new relationship, and subsequently got remarried. In December 2014, after learning that the respondent had a boyfriend, the father became very determined to get

information out of the daughter on what was going on with her mother and this new man. He became very forceful with Malaika and accused her of lying if she said she forgot or didn't know answers to his questions. On one occasion, the daughter details where he slammed on the breaks of the car and yelled at her for not telling the truth. Over the course of three months between January and March 2015, the daughter developed great fear of her dad and started to act out her fear at school by telling the children in her then third-grade class that she was scared of her father, that he had pushed her down on a chair and that her father had given her a blackened finger. Malaika also was very sad during this time and verbalized several times that she wished she was dead. This prompted the mother to take desperate actions. Initially she pulled the daughter from school early keeping the father from coming to get her. She kept her out a couple of days completely and said she was out sick. The respondent used the time to move forward on making sure that Malaika was safe by beginning the process of going to court.

In the meantime, on two occasions the appellant went and found his daughter at times he would not normally have her and took her. Once he showed up at the petitioner's mother's house and once on a late Friday night he took her from the school grounds. When the petitioner learned of this she called the father and asked what was going on. He responded that he was taking her out of town and wouldn't say where. The petitioner called the police and a safety/security check was done on the minor but the police officer reported that he could do nothing more because there was not a parenting plan in place that said he was doing anything wrong.

In late March 2015, the mother, the then petitioner, filed for and was granted a protection order by the courts to keep the respondent away from his daughter. Additionally, she filed a proposed modification to the parenting plan that was in place. The original one had been written as previously noted to indicate that the mother and daughter would be living in Nairobi. The

mother spent a lot of time contemplating whether to serve the protection order, fearing that in the end it would only escalate the situation and eventually she decided not to serve the protection order and served only the proposed parenting plan. The proposed parenting plan did however make reference to the protection order so the appellant did see that it had in fact been approved by the court and as a result, he did seem to back off the whole situation.

The appellant completely backed off from any visitation or contact until September 2015 when school started back up. By this time, he had been completely out of touch with the respondent for several months, and the respondent reached out to the appellant and initiated renewed contact between the father and the daughter to see if she was comfortable and ready to reinstate overnight visitation with her father. This was achieved after three mutual meetings in the park. Since September 2015, the daughter was spending from Tuesday after school to Thursday drop off to school with her father. They had seemed to have rebuilt an amicable father daughter relationship as she was no longer exhibiting obvious stress signs of great fear from her father. However, Malaika did exhibit new rudeness to the mother because the father spent time trying to tell the daughter 'his side' of the discord and to taint the child's image of the mother. Since the mother and her new husband were granted the right to relocate to Snohomish by Honorable Judge Eadie on July 20th 2016, the father has not made any attempts to come visit Malaika. In December 2017, the mother, after asking Malaika to inform her father that she would be going to West Seattle to get her hair braided, drove her 45 minutes. After her hair was done, Malaika informed her father and was hoping she might see him after a then period of 6 months. To her dismay, he did not want to talk to her once he found out that the conversation was on speaker and the mother was in the car. He hung up and was unwilling to talk about which park he

could meet with his daughter. His hostility has made him incapable of co-parenting and is highly stifling to any coordinated effort to parent.

International Travel with the Minor Child

Another major issue between the appellant and respondent is one of travel. The father while never showing any interest in his family back home in the 15 years that the petitioner has known him and never saying anything about introducing his daughter to his family or offering to travel along to Kenya as a family to introduce his then family, has become insistent on taking the minor out of the United States to Kenya. The respondent, the mother, has never been introduced to the appellant's mother, father, or any other member of his family. Not even by phone have they ever been introduced. The respondent travels frequently between the US and Kenya with her daughter. It had been the accepted norm for more than 8 years for the father to allow this all the time never showing any interest in traveling with them. He likes to say that he had to stay behind to pay the bills but the truth is that the mother was the one who was the primary financial provider for pretty much the entire 10-year relationship; the father was unemployed for 14 months while in New York, and unemployed for eight months in Seattle. He was underemployed at Safeway for over 2 years.

The respondent feels that the appellant has set long lasting precedence of limited involvement with his daughter and he only shows such high interest now because another man has been brought into her life and that of her daughters. Additionally, because the respondent knows absolutely nothing about Toll's family and fears there would be extremely high risk to allowing him to travel out of the country with her and that he not be allowed such travel until the child is 18 years of age.

On July 20th, 2016, the Court granted a Permanent Order for Relocation. The home is nestled between the Mill Creek YMCA and a park within walking distance. The elementary school is also within walking distance for Malaika. This move has created a stable home for Malaika where she takes piano lessons and swim classes on a weekly basis. Though the father has opted to appeal Judge Eadie's ruling, AND has refused to come visit his daughter, the respondent has through a career change and a busy hectic schedule balancing academia and home life, maintained the role of a consistent mother and parent.

The father has stated his intention is to take Malaika to Kenya to introduce her to his family. The respondent was married to the appellant for well over a decade, and yet never met or even spoke to a single member of the appellant's family during their relationship or since their divorce. It is the respondent's understanding that the appellant himself has had no involvement or contact with his family for over 15 years, nor ever returned to Kenya during that time, and has stated that he created intentional social and emotional distance from his family over how he felt they misused money he sent them. Given the appellant's estrangement from his family, Malaika has never met or spoken to any member of his family. Further, the appellant's family lives in Uriri, close to a developing town, Migori, which is a lengthy and arduous driving distance from the nearest international airport in Nairobi, and a trip with off-roads that are difficult-to-drive in and poorly constructed. This eight-hour distance, by road, from the respondent's family in Nairobi, would create additional difficulty for Malaika. Since the appellant refuses to communicate by phone, email, or text to the respondent, it would be reasonable to assume his disposition would prevail even with international travel. His last e-mail communication was 6/15/16, and the respondent cannot recall the last time they spoke, being as it has been so long.

SUMMARY OF THE ARGUMENT

The 10-year relationship between the respondent and appellant was a difficult one and in the time since the divorce, it has not gotten any better. The appellant is very demanding and uncompromising in what he wants and never shows any willingness to be part of a solution. He is very quick however to point out to anyone willing to listen how everything is the respondent's fault with regards to the failed relationship and how unwilling she is to do what he wants. In the mind of the appellant, the respondent is trying to keep the daughter away from him, trying to make him out as a bad father.

The respondent has no desire or interest in keeping the father away from his daughter and in fact wants to represent him to her daughter in the best possible light. The appellants desire is to keep Malaika safe, involved in school and other fun activities, to have an emotionally well-balanced child; she wants what is in the best interest of her daughter. With that in mind, the appellant requests that she be granted the following by the court:

1. Restrict both domestic and international travel of the appellant with the minor child until Malaika reaches an age of 18.
2. Notation of gross negligence on appellant to parenting Malaika for the last 20 months as he has not initiated any phone contact. He has falsely told Malaika that he will come pick her and has failed to follow through on any number of occasions. While he could have her visit him on every other weekend, he has determined otherwise. He never calls on her birthday, on Christmas, on New Year's. The mother has reminded the child to call on Father's Day, on Christmas Day, on his birthday.
3. Notation of current emotional stability of child. Since June 23rd 2016, when the mother drove to West Seattle to pick up Malaika from a visit where she, the mother, had driven

Malaika to, the respondent has been unwilling to come and pick up his daughter. During this time Malaika went from a stage where she was very angry to one where she is happy and fits in well with her classmates. The mother has had to counsel Malaika and work very hard at her feeling loved and safe and secure. Malaika often felt depressed and abandoned from the father's neglect. Also, he would spend a lot of time telling her how bad the mother was and wanted to create a hostile ground for mother and daughter. Therefore, the mother is requesting that the Appeals Court uphold the sole decision making that Judge Eadie granted in July 20th 2016. In addition, the mother is asking for sole legal custody of child.

4. Reprieve from further arguments from appellant who continues to be falsely accusatory about the intent of a specific sentence in the parenting plan. The specific language in the parenting plan lumps physical, emotional or sexual abuse together and this has been offensive to Toll Obuon. In the actual Trial Brief, on page 337, he says that the respondent accused him of having sex with his daughter; and, this misinterpretation has become another bone of contention. On page 341 of the said Trail Brief, Judge Eadie says that no-one would read it that way except for him

ARGUMENT AND APPLICATION OF FACTS THERETO

The appellant allowed the respondent and child to travel to Nairobi often. However, he never joined the family and often remained behind because of his work and school schedule. He rarely called while the respondent and child were in Kenya. In summer 2010, while the respondent and child were in Nairobi for two months with a UW college student, he only called

during the first two days because he needed to know where certain documents were regarding his car. In the next two months, he didn't call. The UW student would get calls from her family and weep for joy and from being homesick. The child did not get calls from her father and this led people in the household to ask if the child did indeed have a father. As he never called the respondent, or his birth family, the mother and child were never introduced to any of his large extended family. Not even by phone. That means that culturally, the mother was not acknowledged as the wife as she was never taken to Toll's village. Further, in the one and a half years that the mother and child resided and worked in Nairobi, there was negligible communication from the appellant. Again, there was never any communication to his parents, even by phone. None of his extended family came to visit the respondent and neither did they come to see the child. The families though in a country the size of Texas, never met. They never spoke and have no idea of each other. The child will be walking into a vacuum of relationships which have been neglected for over 15 years as a result of the bitterness and animosity that the appellant has held towards them. The mother requests that the child be allowed to travel to meet the respondent's family when she is at least 18 years old. At that age the child can have her own cell phone and can be reached by mother. During the times that the child was with her father from September 2015, the mother tried to call the daughter on those days and she was often not able to get through. The child regularly said that the phone was accidentally left in the car. The mother requests that the child travel when she is 18, has some more maturity, and her own phone.

CONCLUSION

For the foregoing reasons, the respondent, Wairimu Sumrell, respectfully requests that the Court grant her the relief requested herein.

Respectfully submitted this 23rd day of February, 2018

Wairimu Sumrell
Wairimu Sumrell, respondent

WAIRIMU SUMRELL - FILING PRO SE

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