

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NANYUKI

MISCELLANEOUS CIVIL CASE NO E013 OF 2021

NWM (Suing as the mother and Next Friend of CEM, a Minor).....APPLICANT

VERSUS

CBHC.....RESPONDENT

R U L I N G

1. The Applicant herein, **NWM**, has sought by **chamber summons dated 09/06/2021** the main order that the Respondent, **CBHC**, be “*ordered to submit to a DNA test in order to determine whether he is the biological father of the subject minor, CEM.*” There are other consequential orders sought. The application is supported by the affidavit of the Applicant annexed to the application.
2. The main ground for the application is that the issue of paternity of the minor has arisen in ***Nanyuki CM Children’s Case No E013 of 2021*** between the same parties herein for assumption of parental responsibility by the Respondent and for the upkeep and maintenance of the child. It is said that in the said proceedings the Respondent (who is the defendant there) has denied that he is the father of the child.
3. In response to the present application the Respondent raised a preliminary objection by **notice dated 15/06/2021**. The point of law taken is that this court lacks jurisdiction to entertain the application because the same issue is before the Children’s Court in the aforesaid case.
4. There are no substantive proceedings before this court upon which the present application could be properly brought. It has also not been argued that the Children’s Court has no jurisdiction to order a DNA test; it is before that court where there are substantive proceedings between the same parties over the same child, and before which the same issue of paternity has arisen. Let the issue of a DNA test be first canvassed before the Children’s Court.
5. I will in the circumstances uphold the preliminary objection upon the ground that there are no substantive proceedings before this court upon which the application for a DNA test can be properly made.
6. In the result, the chamber summons dated 09/06/2021 is hereby stuck out with costs to the Respondent. It is so ordered.

DATED AND SIGNED AT NANYUKI THIS 30TH DAY OF MARCH 2022

H P G WAWERU

JUDGE

DELIVERED AT NANYUKI THIS 31ST DAY OF MARCH 2022