



Law Society of Kenya (Suing as the Next Friend of and on Behalf of DMM & BNM) v Chief Registrar of the Judiciary & 4 others (Constitutional Petition E003 of 2024) [2025] KEHC 4690 (KLR) (8 April 2025) (Ruling)

Neutral citation: [2025] KEHC 4690 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
CONSTITUTIONAL PETITION E003 OF 2024**

LN MUTENDE, J

APRIL 8, 2025

IN THE MATTER OF ARTICLES 22, 23, 53 & 165 OF THE CONSTITUTION OF KENYA

-AND-

**IN THE MATTER OF THE ALLEGED VIOLATION OF RIGHTS OF CHILDREN
IN CONFLICT WITH THE LAW UNDER THE CHILDREN ACT, 2022**

-AND-

**IN THE MATTER OF THE VIOLATION OF THE RIGHTS OF MINORS
ENSHRINED UNDER THE INTERNATIONAL CONVENTION ON
THE RIGHTS OF THE CHILD (CRC) AND THE AFRICAN CHARTER
ON THE RIGHTS AND WELFARE OF THE CHILD (ACRWC)**

BETWEEN

**THE LAW SOCIETY OF KENYA (SUING AS THE NEXT FRIEND OF AND ON
BEHALF OF DMM & BNM) PETITIONER**

AND

THE CHIEF REGISTRAR OF THE JUDICIARY 1ST RESPONDENT

THE DIRECTOR OF PUBLIC PROSECUTIONS 2ND RESPONDENT

THE INSPECTOR GENERAL OF POLICE 3RD RESPONDENT

THE ATTORNEY GENERAL 4TH RESPONDENT

THE NATIONAL POLICE SERVICE COMMISSION 5TH RESPONDENT



RULING

1. The Law Society of Kenya (LSK) filed a petition pursuant to Article 22 of the Constitution seeking to address violations of children rights within the judicial system. Filed simultaneously with the substantive petition is a Notice of Motion dated 28th August, 2024 where the Applicant seeks orders thus;
 1. That pending hearing and determination of the Petition, this Honourable court issues an order restraining the respondents from disclosing the identities of the minor BNM, in court records, documents, or public proceedings.
 2. That the court compels the respondents to redact the names of the minors from all court documents and records related to that case.
 3. That the court directs the Chief Registrar of the Judiciary to provide certified copies of all documents related to the cases of DMM and BNM and to waive all associated costs.
2. The application is premised on grounds that there are ongoing and imminent violations of the minors' rights to privacy, dignity and fair administrative action, there is urgent need to prevent further harm and stigma to the minors pending the resolution of the petition and there is necessity for certified copies of court proceedings and court documents to ensure accurate and complete proceedings.
3. In support of the application is an affidavit deposed by Florence Muthoni the CEO of the Petitioner who avers that the petition is instituted in public interest to protect and enforce constitutional rights of minors exposed to public humiliation and violations of dignity.
4. That in particular, the Respondents have violated minors' rights on the case of DMM and BNM by disclosing their identities in court documents and proceedings having failed to apply diversionary programs as mandated by the Children Act, 2022 which has resulted into stigma and psychological trauma. That despite efforts made to remedy the situation, the Respondents have failed to take corrective action.
5. That there is need for prevention of further disclosure of the minors' identities especially identification and addressing ongoing violations especially in the case of *MSO E013/2024* that remains pending.
6. This matter came up at the outset under certificate of urgency where Nyaga J. gave interim orders dated 25th September 2024, directing that the charge sheets as drawn were in violation of provisions of Section 220 of the Children Act, 2022 which called for amendment. The court directed that the charge sheets be redacted and it also stayed the stated cases pending editing of the documents.
7. The 1st, 3rd and 4th Respondents filed grounds of opposition dated 16th September 2024, where it is stated that orders sought by the Applicant cannot be granted at the interlocutory stage since the effect of granting the orders will determine the matter without the opportunity to interrogate and determine it on merit.
8. That no evidence has been availed to prove that the applicants were minors as at the commencement of proceedings in Nyahururu MCCR. *E1232/2023*; *MSO E012/2024* and *MSO E013/2024* hence the application is hinged on suppositions.
9. The Petitioner/Applicant filed a further affidavit through counsel in conduct of the matter where he depones that indeed the claim is with merit as the charge sheets and court records in Nyahururu



- E1233/2023, *MSO E012/2024* and *MSO E013/2024* clearly reflects ages of minors thereby justifying the request for certified copies with the 1st and 2nd Respondents as custodians of the original records are obliged to provide.
10. That although the 2nd Respondent's amendment of the charge sheet to remove the minors' names constitutes partial compliance with the orders issued on 3rd September 2024, acknowledging their status as minors and confirming the ongoing violation of their right to privacy. However, that notwithstanding the minors' names continue to be publicly disclosed on printed and virtual cause lists, are read aloud in court, and remain visible on the Judiciary's CTS Portal.
 11. That the argument by the Respondent that interim orders would dispose of the petition is misplaced. And no prejudice will be suffered if interim orders are granted.
 12. Directions as to how the application was to be disposed were given on 17th January, 2025. Pursuant to the directions given only the Applicant's counsel filed submissions. It is urged that the application could only be challenged through evidence which should have been achieved by filing of a replying affidavit. As stated in *Mutuku v Kenya Ports Authority* [2001] eKLR where the court emphasized that an application cannot be opposed solely on the basis of grounds of opposition unless supported by facts through a replying affidavit.
 13. It is further urged that the best interests of the child are paramount in every matter, a principle reaffirmed in *Charles Muturi Macharia v Republic* Petition (E015) of 2022.
 14. That the case goes beyond mere administrative error, as failure to expunge the minors' names from the records or seal their judicial record after acquittal is indicative of a broader systemic failure in the judicial process.
 15. It was further submitted that a prima facie case has been established of irrefutable evidence that the minors' rights have been violated, they have suffered irreparable harm and the balance of convenience favours the Petitioner.
 16. I must point out that on record is an affidavit filed by the 2nd Respondent. The document received on 2nd April, 2025 filed by Mr. Bernard Obutu, Prosecution Counsel, states that prayers sought intend to protect and promote the best interest of the child as provided in the Constitution and the *Children Act*. That orders sought can be granted administratively by the 2nd Respondent and the same has been an ongoing matter. That upon correction of the names, no prejudice will be suffered by the minors DMM and BNM.
 17. I have considered the application, supporting affidavit and those in response. I have also perused the annexures to the supporting affidavit and considered the arguments by the Applicant's counsel. Restraining orders sought herein are protective in nature which are legal injunctive sanctions that would prevent the Respondents from acting in specific ways. In the instant case persons to be protected are vulnerable. It was hence upon the Applicant to demonstrate existence of a prima facie case with a probability of success. It should be proved that unless the order sought is granted the subjects shall suffer irreparable harm and considering the matter on probabilities, the balance of convenience must tilt in favour of the Applicant.
 18. In *Mrao Limited v First American Bank of Kenya* [2003] KLR 120 it was stated that;

“A prima facie case in a civil application included but was not confined to a genuine and arguable case. It was a case which, on the material presented to the court, a tribunal



properly directing itself would conclude that there existed a right which had apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

19. The 2nd Respondent concedes to the fact of the need to have the subjects protected. This coming from the 2nd Respondent who instituted the matters being complained of, it means that the case is strong which calls for issuance of orders sought.
20. If indeed the allegations by the Applicants are true then failure to correct the anomaly will be injurious to the minors. Any monetary damages, if awarded may not necessarily adequately compensate them.
21. In the result, the balance of convenience tilts in favour of the Applicant.
22. From the foregoing, I find the application having merit, and I order as follows;
 1. Pending hearing and determination of the Petition, the 1st, 2nd and 3rd Respondents be and are hereby restrained from disclosing the identities of the subject BNM in any court records, documents and proceedings.
 2. The 1st, 2nd and 3rd Respondents shall redact the names of the minors from all documents related to the stated case.
 3. No order as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 8TH DAY OF APRIL, 2025.

L.N. MUTENDE

JUDGE

