



**MWM v CAD (Miscellaneous Cause E254 of 2023)  
[2024] KEHC 15408 (KLR) (Family) (16 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 15408 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
MISCELLANEOUS CAUSE E254 OF 2023  
EKO OGOLA, J  
APRIL 16, 2024**

**BETWEEN**

**MWM ..... APPLICANT**

**AND**

**CAD ..... RESPONDENT**

**RULING**

1. The application before this Court is dated 18<sup>th</sup> November 2023. The applicant prays for the following orders:-
  - a. Spent;
  - b. Spent;
  - c. That this Honourable Court be pleased to call for the record of the proceedings before the Children’s Court at Nairobi in Nairobi Children Court Misc. Application NO. E789 OF 2022, In The Matter of Rowan Jomo Legend Dary - Milicent Wambui Mugih vs Claude Allen Dary consolidated 689 of 2022 for the purpose of determining the legality of those proceedings therein including declining to refer to her Ladyship the Hon. Chief Justice the said suits for her Ladyship to request the Chief Justice of the New York state to request Judges of the Family Court of that state to stop interfering with the independence of the Courts in Kenya through talking or writing to them on how to handle the custody disputes between the parties, to stop pre-empting the outcome of proceedings pending in the children’s Court at Nairobi, for declining to admit custody proceedings pending in the New York Court as part of the proceedings in Kenya.



- d. That this Honourable Court be pleased to declare the ruling of the New York Family Court delivered on 21<sup>st</sup> September 2023, pre-empting the decision of the Children’s Court in the said Nairobi Children’s Court Misc.Application NO. E789 OF 2022, In The Matter of Rowan Jomo Legend Dary - Milicent Wambui Mugih VS Claude Allen Daryconsolidated 689 of 2022 and holding that that Court and not the Kenyan Court has jurisdiction to entertain the custody dispute is null and void.
  - e. A declaration be and is hereby issued that under Article 50 (3) of *the Constitution*, the Kenya Court including the Children’s Court Act as parens patriae and not the New York State Family Court.
  - f. A declaration be and is hereby issued that the Children’s Court in Kenya is obliged to protect citizens of the Republic of Kenya both those residing in Kenya and those residing elsewhere in the world.
  - g. A declaration be and is hereby issued that the recognition of the orders of the Family Court of New York of 21<sup>st</sup> September 2023 offends public policy and the same is null and void and should be so treated by the children’s court in Kenya.
  - h. A declaration that the directions given by the Children’s Court in Nairobi Children Court Misc. Application NO. E789 OF 2022, In The Matter of Rowan Jomo Legend Dary - Milicent Wambui Mugih VS Claude Allen Daryconsolidated 689 of 2022 contravene the applicant’s rights under Article 50 of *the Constitution* for a fair hearing by an independent and impartial Tribunal.
  - i. An order of certiorari is issued to quash the proceedings before his Hon Mr. Terer.
  - j. An order that the proceedings stand de novo before a magistrate other than Mr. Terer in the Children’s court.
  - k. That there be a stay of further proceedings in the said Nairobi Children Court Misc. Application NO. E789 OF 2022, In The Matter of Rowan Jomo Legend Dary - Milicent Wambui Mugih vs Claude Allen Daryconsolidated 689 of 2022 pending the hearing and determination of this application/suit.
  - l. That there be an interim stay of proceedings in the said Nairobi Children Court Misc. Application NO. E789 OF 2022, In The Matter of Rowan Jomo Legend Dary - Milicent Wambui Mugih vs Claude Allen Dary consolidated 689 of 2022 until further orders of this Honourable Court.
  - m. That the costs of this application be provided for.
2. The application is based on the grounds set out therein and the applicant’s supporting affidavit.
  3. The applicant deposed that there are parallel custody hearings for the minor, that is, in New York Family Court and in Nairobi Children’s Court. According to the applicant, the judicial officer in New York requested the contact details of the Judicial officer in the Nairobi Children’s Court. The applicant further stated that she has been aggrieved with the directions and orders of the trial court and whenever she prays for a stay of proceedings pending appeal, the trial court has dismissed her applications.
  4. The applicant further stated that the New York Court Ruled that they have the jurisdiction to hear and determine the minor’s custody case. The applicant was given temporary custody of the minor and the respondent was to have supervised visits. The applicant deposed that the New York Court has taken



charge of the custody case and has ignored the Nairobi Children's Court orders which directed that the applicants should have interim custody over the minor. The Nairobi Children's Court did not give the respondent access to the minor. Therefore, The United States of America has usurped the protective functions of Kenya.

5. The applicant deposed that she is aggrieved by the directions and proceedings of the Children's Court which have contravened her right to a fair hearing.
6. The respondent opposed the application vide a Replying Affidavit dated 2<sup>nd</sup> December 2023. He deposed that the applicant had filed an application for recusal of Onyiego J. who was in conduct of one of the cases the applicant had filed in the High Court in Nairobi. This was after she was dissatisfied with the orders issued by the said judge. The respondent further stated that the applicant and the minor's daughter also filed a letter in the New York Court expressing their dissatisfaction with the judicial officer. Lastly, the applicant has also expressed her dissatisfaction several times with the trial Magistrate in the Children's Court in Nairobi.
7. The respondent deposed that the New York suit was instituted first before any suit was instituted in Kenya and the minor's mother enjoys several orders from the proceedings including orders that the respondent pay maintenance costs of the minor.
8. According to the respondent, the orders prayed for cannot be issued as this court lacks the jurisdiction to stay or set aside orders issued in the New York Court. Furthermore, no code of conduct bars a judicial officer from contacting another judicial officer to discuss a case. The respondent stated that this type of communication would only be to appraise each other of the correct and accurate status of the case.
9. The respondent deposed that if the applicant is aggrieved by the Ruling of the trial Court, she ought to ventilate her dissatisfaction through an appeal or an application for Review. He added that the proceedings before the Children's Court are at its tail end. Therefore, this court should not allow the orders as prayed.
10. The parties have canvassed the application by way of Submissions.

### **Determination**

11. I have considered the application, the rival affidavits, the submissions of counsel and the entire record of the court.
12. This Court has the power to supervise the Children's Court. However, this power has to be exercised sparingly and appropriately to balance the trial court's independence and ensure that the trial court is within its prescribed sphere. In this case, the applicant has not provided to this court any evidence that the trial court has been ultra vires or biased or that the proceedings have been illegal or irregular. The only contention is that she has been aggrieved with the Ruling of that Court and that the trial magistrate has had private communications with the Judicial Officer in the New York Court. The New York Judicial Officer stated in his Ruling that when he contacted the trial magistrate, he was directed to seek all information he would require from counsel. The applicant has not provided any evidence of further communication between the two courts. Moreover, nothing is barring a judicial officer from consulting with fellow judicial officers whether in the same jurisdiction or outside on a case. After all is said and done, judicial officers have judicial independence, and their decisions cannot be influenced by another. If the judicial officer is influenced then this would be an opportunity for the aggrieved party to file an appeal or orders of review.



13. On the issue of setting aside the Orders from the New York Court, it is my view that this Court lacks the jurisdiction to make any orders affecting the Courts in other jurisdictions. The only jurisdiction that this Court has is the enforcement of orders in Kenya.
14. The upshot is that the application dated 18<sup>th</sup> November 2023 is dismissed. Cost to the respondent.  
Orders accordingly.

**DATED AND DELIVERED AT NAIROBI THIS 16<sup>TH</sup> DAY OF APRIL 2024**

**E.K. OGOLA**

**JUDGE**

In the presence of:

Mr. Ndungu Kuria h/b for Dr. Kamau for the Applicant

Mr. Andiwo for the Respondent

Libertine Oriol Court Assistant

