



REPUBLIC OF KENYA



**EWM (A Child Suing through her legal Father and Next Friend PMN) v JG alias JW alias JWG (Children's Case E142 of 2023) [2025] KEMC 249 (KLR) (13 May 2025) (Ruling)**

Neutral citation: [2025] KEMC 249 (KLR)

**REPUBLIC OF KENYA  
IN THE NAKURU LAW COURTS  
CHILDREN'S CASE E142 OF 2023  
PA NDEGE, SPM  
MAY 13, 2025  
IN THE MATTER OF THE APPLICATION UNDER THE  
CHILDREN'S ACT AND IN THE MATTER OF EWM (MINOR)**

**BETWEEN**

**EWM ..... PLAINTIFF**

**A CHILD SUING THROUGH HER LEGAL FATHER AND NEXT FRIEND PMN**

**AND**

**JG ALIAS JW ALIAS JWG ..... DEFENDANT**

**RULING**

1. Before me is an application brought pursuant to the provisions of sections 1A, 1B, 3A of the *Civil Procedure Act*; Section 32 of the *Children Act* and Order 51 of the *Civil Procedure Rules*, wherein the plaintiff is seeking for the following substantive orders: -
  - a. That pending the hearing of this suit, the Respondent be ordered to enjoin the biological father of the applicant to these proceedings
  - b. That pending the hearing of this suit, the honorable court be pleased to order the applicant to surrender DNA samples to KEMRI
  - c. That pending the hearing of this suit, the Honorable Court be pleased to issue a declaration that the applicant is not the biological father of EWM.
  - d. That pending the hearing of this suit, the respondent and the biological father of the minor be compelled to contribute financially towards the upkeep of the Minor.
  - e. That the Honorable Court be pleased to issue such further or other relief as may be juts in the circumstances



2. The application is based on the annexed affidavit of the plaintiff sworn at Thika on 24/01/24, and the 13 grounds on the face of it; mainly that: -
  - a. The Applicant had a brief relationship with the respondent sometime in January, 2010.
  - b. The Applicant left Kenya on 12/05/2010 for work in Texas, United States of America.
  - c. The Applicant was informed by the Respondent that the Minor was born on 23/02/2011 and that he was the biological father.
  - d. The Applicant accepted the Respondent's assertions and supported the Minor and the respondent financially.
  - e. The Applicant planned for the Minor to reside with him and sometime in 2017, the Minor joined him to live in Texas, USA for 4 years.
  - f. The Minor intimated to the Applicant that she desired to return home to Kenya and on 24/05/2021, the Applicant took the Minor to the Respondent's mother since the Respondent had relocated to Bahrain.
  - g. The Applicant on suspicion that he is not the biological father of the Minor conducted a DNA test on 18/09/2021 which confirmed his suspicions.
  - h. The Applicant is ready, able and willing to send samples to KEMRI laboratory for another paternity test since he is based in the United States and cannot afford to come to the country.
  - i. The Applicant is ready, able and willing to visit KEMRI laboratory for another paternity test if the Honorable Court orders it.
  - j. The Applicant is desirous to have the biological father and the Respondent contribute financially to the upkeep of the Minor.
  - k. The Application is brought in the interest of justice and the best interests of the Minor.
  - l. The Application is made timeously and without delay.
  - m. The Respondent shall not be prejudiced if the orders sought are granted.
3. The Application is further based on a Further Affidavit of the Applicant sworn at Thika on 14/03/2025. The Application was served on the Defendant who nevertheless did not file a response. No replying affidavit nor grounds of opposition were filed and the upshot is that the court might be excused to deem the application as unopposed entirely. Be that as it may, as a Court of Law, I have a duty in principle to look at what the Application is about and what it seeks. It is not automatic that for any unopposed application, the Court will as a matter of course grant the sought orders. As held by the Supreme Court of Kenya in *Gideon S. Konchellab vrs Julius L. Sunkuli & 2 Others* [2018] eKLR, it behoves the Court to be satisfied that *prima facie*, with no objection, the application is meritorious and the prayers may be granted. The court is thus under a duty to look at any points of Law, such as any jurisdictional impediment, which might render the application a non-starter.
4. I have looked at the Application herein. It is an interlocutory application. I have also looked at the main suit and the prayers sought which to me, appear to be similar to the prayers being sought in this Application. In the main suit, the Plaintiff/ Applicant has sought for the following orders: -
  - a. A declaration that the Plaintiff is not the biological father of EWM, the Minor herein.



- b. An order to compel the Defendant to enjoin the biological father of EWM in these proceedings.
  - c. A declaration that the biological parents of EWM have actual or equal parental responsibility towards the upkeep of the subject.
  - d. Costs of this suit plus interest thereon at court rate.
  - e. Any other or further relief this Honorable Court may deem fit and just to grant.
5. As such I do find that it would be a travesty of justice for this Court to make any findings of fact or to finally determine the rights of the parties in this suit at this interlocutory stage. I find so because issuing the orders sought at this interlocutory stage shall appear to have disposed the substantive suit at an interlocutory stage. This Court shall appear to have issued final orders on the primary dispute thereby making final determination at an interlocutory stage contrary to the settled principle that a court, at an interlocutory stage, is not expected to make a final determination of the issues that will be discussed at the trial.
6. I find that the orders sought in this interlocutory application are the same as the orders sought in the main suit herein except the order for further DNA analysis. I further do find that the orders sought herein are generally not in the best interest of the Minor herein and do herein dismiss the Application as an abuse of the Court process, save for prayers number 3. In the premise, I do hereby allow this application in terms of prayers No. 3 and therefore do hereby order that pending the hearing and determination of this suit, the applicant to surrender DNA samples to KEMRI for a second analysis as sought.

**DELIVERED AND SIGNED AT NAKURU THIS 13<sup>TH</sup> DAY OF MAY, 2025.**

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**ALOYCE-PETER-NDEGE**

**SENIOR PRINCIPAL MAGISTRATE**

In the presence of;

Present for the Plaintiff/ Applicant: Kithinji

Plaintiff/ Applicant: N/A

Minor: N/A

