



**NM (Suing in her Capacity as the Mother and Next Friend of YS – Minor) v SKL (Miscellaneous Civil Application E051 of 2025) [2025] KEHC 15517 (KLR) (31 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15517 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAROK  
MISCELLANEOUS CIVIL APPLICATION E051 OF 2025  
CM KARIUKI, J  
OCTOBER 31, 2025**

**BETWEEN**

**NM ..... APPLICANT  
SUING IN HER CAPACITY AS THE MOTHER AND NEXT FRIEND OF YS –  
MINOR**

**AND**

**SKL ..... RESPONDENT**

**RULING**

1. The Application heard was one dated 02/10/2025, made by Mr. Kamwaro, Advocate, and Mr. Odhiambo, representing the Respondent.
2. The Matter came for hearing under a certificate of urgency on 03/10/2025, and the Court directed that Kilgoris CMCC E030/2025 be stayed temporarily until further orders of the Court. Meanwhile, Applicant was to serve Respondent by close of business on 07/10/2025, and directions were fixed for 08/10/2025. The parties agreed to try settlement, and the Matter was fixed for mention on 15/10/2025. By 15/10/2025, Applicant/Advocate was absent, and the Court directed that as there was no settlement the application be canvassed; submissions were to be exchanged by 17/10/2025. The day turned out to be a public holiday. Thus, Matter was mentioned on 21/10/2025.
3. The Matter was fixed for mention on 23/10/2025, and the Applicant's Advocate was served with a notice of mention on 23/10/2025, but the Applicant still did not appear in Court. The Court indicated that the parties were supposed to have filed submissions, but only the Respondent did.
4. This Ruling was fixed for 31/10/2025, and the Respondent was directed to serve the Applicant's side. Thus, to date, the Court has not seen Applicant's Submissions. Thus, the Application is to be determined on the pleadings in Court and the Respondent's Submissions.



5. The Applicant's case is that the Appellant is the mother of the minor subject herein and had been married to the Respondent. However, due to circumstances beyond his control, the Respondent was forced to abandon the matrimonial home and abdicate his parental responsibilities.
6. The suit was lodged in Kilgoris No. Children's Case No. 30/2025 and was scheduled for a hearing on 07/10/2025; thus, the instant Application dated 02/10/2025 was lodged, and a temporary stay of proceedings in Kilgoris CMCC No. 30/2025 was issued to await further orders from the Court.
7. The Applicant seeks transfer of suit from Kilgoris CMCC's to Court at the Narok CM's Court on the basis that Article 48 Laws of Kenya, 2010 decrees the right to access to justice dictates that grant of the Application will enable Applicant enjoy that right by having Matter heard in Narok CM's Court as the minor attends school at an Academy in Narok Township and the Applicant resides in Narok. Thus, the Applicant seeks that the above Matter be transferred and heard in Narok.
8. The Respondent's case is that the minor has been living in [Particulars Withheld] village and studying in [Particulars Withheld] Primary School – Kilgoris since 2019. When the Children Officer summoned and a court order was issued for the Applicant herein to produce the child in Court, the Applicant decided to relocate the minor to Narok, where she alleges the minor currently resides.
9. She insists her case be heard in Narok now, even though it was filed after the CM's Case in Kilgoris. The Applicant misled the Court that she filed the case in Narok before the Kilgoris case, but the Kilgoris case was filed on 15/09/2025, while the instant Matter was filed on 02/10/2025.
10. This is an abuse of the court process, as the Applicant ought to have filed his claims documents herein in the Kilgoris case. There is a subsisting order which Applicant has disobeyed by failing to produce the child in Court in Kilgoris.
11. It is stated that the parties have been living in Kilgoris since 2016. The parties later separated, and Applicant moved to Osero, Trans Mara West Kilgoris, where the minor was studying. The Applicant relocated to Narok. It is stated that she relocated the minor to her sister's place in Narok and that the minor now lives with a third party.
12. The Applicant has not responded to the Respondent in the Affidavit and Submissions as directed by the Court during directions.
13. The filing of the children's case in Narok CM's Court, while an earlier matter in Kilgoris is subsisting and relates to the same subject matter without material disclosure, apparently violated the principle of res judicata, as the parties are the same and the subject Matter is the same minor. The res subjudice rule in Kenya prevents a court from trying a case that is the subject of a previously filed, active lawsuit between the same parties in the same or another court, imported through the Judicature Act. Section 6 of Kenya's Civil Procedure Act (Cap. 21) is titled "Stay of suit".
14. It mandates that no court can proceed with a trial if the Matter in issue is already the subject of a previously instituted suit between the same parties and is pending in any court with jurisdiction. This is known as the sub-judice rule, and its purpose is to prevent the filing of multiple lawsuits on the same Matter, which would be an abuse of the court process and could lead to conflicting decisions. In the case of Kenya National Commission on Human Rights vs Attorney General, Independent Electoral & Boundaries Commission & 16 Others (Interested Parties), where the Supreme Court held the following on the issue of sub judice:....The purpose of the sub-judice rule is to prevent the filing of a multiplicity of suits between the same parties or those claiming under them over the same subject matter, to avoid abuse of the Court process, and to diminish the likelihood that courts with competent jurisdiction will issue conflicting decisions over the same subject matter. This means that when two or



more cases are filed between the same parties on the same subject matter before courts with jurisdiction, the later-filed case ought to be stayed pending the determination in the earlier suit.

15. This ground alone is sufficient to stay or strike out the entire proceedings/matter before the Court. The Applicant ought to have filed his claim in the Kilgoris case, then seek transfer if she thought it was just to do so. The material non-disclosure that the Kilgoris case was earlier filed and concerned the same subject Matter and parties is an abuse of the court process. Therefore, the Court directs that if Applicant has a claim to make, she should do so in the Kilgoris case and then move the Court for transfer, having raised jurisdiction in the Kilgoris case. The Applicant must follow the correct legal procedures.
16. Thus, the Court makes the orders, exercising its authority and control over the proceedings as follows.
  - i. The proceedings/matter and the interim orders in the instant proceedings are stayed to await the hearing and determination of the Matter pending in Kilgoris. Children's Case No. 30/2025.
  - ii. The Matter in Kilgoris proceeds in accordance with the rules provided.
  - iii. No orders as to costs.

**DATED AND DELIVERED AT NAROK VIA MICROSOFT TEAMS THIS 31<sup>ST</sup> OCTOBER, 2025.**

.....

**CHARLES KARIUKI**

**JUDGE**

