



**EBG v BMK (Miscellaneous Case E149 of 2025)  
[2025] KEHC 16377 (KLR) (Family) (13 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16377 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
MISCELLANEOUS CASE E149 OF 2025  
HK CHEMITEI, J  
NOVEMBER 13, 2025**

**BETWEEN**

**EBG ..... APPLICANT**

**AND**

**BMK ..... RESPONDENT**

**RULING**

1. This ruling relates to the application dated 21<sup>st</sup> May, 2025 filed by the Applicant EBG, seeking for orders that:-
  1. Spent.
  2. Pending the hearing and determination of this application, there be a stay of proceedings.
  3. Pending the hearing and determination of this application, there be a stay of all interim orders in Nairobi Mcch E493 of 2025 issued on 9<sup>th</sup> April, 2025 exparte and subsequently on 19<sup>th</sup> May, 2025.
  4. This honourable court be pleased to withdraw Nairobi Mcch E493 of 2025 and transfer it to the Children’s Court at Kiambu Law Courts for hearing, determination and disposal by a Magistrate of competent jurisdiction.
  5. This honourable court upon determining the issue of jurisdiction, if it finds that the Children’s Court at Nairobi lacks jurisdiction be pleased to vacate all the orders issued in Nairobi MCCHC E493 of 2025 and the said orders be deemed void ab initio.
  6. The costs of this application be provided for.



7. Any other relief that this honourable court may deem fit and just in the best interest of the minors.
2. The application is based on the grounds thereof and supported by affidavit sworn by EBG on 21<sup>st</sup> May, 2025.
3. She avers inter alia that she is the Defendant in Nairobi MCCHC E493 of 2025, filed on 17<sup>th</sup> March, 2025 by the Respondent/Plaintiff in the Children's Court at Nairobi. The Respondent knowingly instituted the suit in Nairobi, despite being fully aware that the minors attend [Particulars withheld] School, [Particulars withheld] Campus and reside with her at [Particulars withheld] Estate, off Kamiti Road, Kiambu County.
4. Prior to this, the Respondent had filed a similar matter in Ruiru MCCHC E006 of 2025, deliberately disregarding the court's territorial jurisdiction and acting contrary to the best interests of the minors and in a ruling delivered on 20<sup>th</sup> February, 2025, the Ruiru Children's Court held that it lacked territorial jurisdiction, directing the Respondent to apply for transfer of the suit to a competent court through the High Court within 30 days, failing which the matter would stand dismissed.
5. Instead of complying, the Respondent withdrew the Ruiru case via a notice dated 7<sup>th</sup> March, 2025 - served on 10<sup>th</sup> March, 2025 - and thereafter re-filed the same matter in Nairobi under MCCHC E493 of 2025 on 17<sup>th</sup> March, 2025. She only became aware of the Nairobi proceedings upon receiving a text message from the Respondent informing her of orders issued ex parte.
6. On 9<sup>th</sup> May, 2025, acting through her advocates, she filed an application under certificate of urgency seeking to set aside the ex parte orders of 9<sup>th</sup> April, 2025, which had been obtained without service of pleadings on her or her advocates. The court initially directed her advocates to re-upload the application due to a filing error, which they did on 12<sup>th</sup>, 13<sup>th</sup>, and 14<sup>th</sup> May, 2025, and also delivered a hard copy to the registry. When the matter was mentioned on 19<sup>th</sup> May, 2025, the court gave directions on the pending application and varied Order No. 2 of the ex parte interim orders to specify that the minors were to be picked up by the Respondent at the Chief's Camp, [Particulars withheld], at 10:00 a.m. and returned to the same location at 4:00 p.m.
7. Her advocates raised the issue of jurisdiction during the same appearance, notifying the court of their intention to file a preliminary objection dated 19<sup>th</sup> May, 2025, which they did on 20<sup>th</sup> May, 2025.
8. It is in the best interests of justice that this matter be transferred from the Children's Court at Nairobi to the Children's Court at Kiambu, to prevent abuse of process, ensure consistency of pleadings, and facilitate efficient and expeditious determination. The Nairobi case - MCCHC E493 of 2025 - was scheduled for mention on 29<sup>th</sup> July, 2025, but to avoid concurrent proceedings, it is necessary to stay the Nairobi proceedings and orders pending the determination of this application.
9. That she resides with the minors at [Particulars withheld] Estate, Kiambu County, as demonstrated by the annexed Google map, confirming that the minors reside and attend school within Kiambu. Under civil procedure and children's law principles, children's cases must be filed where the children reside or attend school, or where the defendant resides or works, not where the Plaintiff finds it convenient.
10. Consequently, Nairobi MCCHC E493 of 2025 is improperly filed, amounts to forum shopping and is procedurally defective. A court without jurisdiction cannot confer jurisdiction upon itself, and any orders issued in such circumstances are null and void ab initio. Magistrates' courts have territorial limits; jurisdiction is not nationwide, hence the establishment of separate courts per county.



11. Despite her consistent objection to jurisdiction, the Nairobi court has continued to issue directions and orders without determining whether it has authority to hear the matter. The Respondent continues to rely on irregular ex parte orders, obtained through misrepresentation and abuse of process, thereby prejudicing the minors and undermining natural justice.
12. This Honourable Court has supervisory jurisdiction over subordinate courts under Article 165 (6) and (7) of *the Constitution*, and may call up the record, issue directions and transfer proceedings to ensure fairness and legality. It is therefore in the best interests of the minors that the Court calls for the records of both Nairobi MCCHC E493 of 2025 and Ruiru MCCHC E006 of 2025, including video proceedings, to assess and determine the issues raised.
13. The Respondent's conduct - filing in Ruiru, then withdrawing after an adverse ruling and re-filing in Nairobi - demonstrates abuse of the court process and forum shopping. His actions reveal mischief and deliberate misrepresentation of material facts to mislead the court and obtain orders unjustly.
14. This suit is not about the welfare of the minors, as the Respondent has failed to provide any financial support. The Applicant and her family have been solely responsible for the minors' needs and the allegation of denial of access is false and misleading. The Applicant has never obstructed access; rather, it was the Respondent who, following a domestic dispute, evicted her and barred her from returning, subsequently abandoning his parental responsibilities. His purported pursuit of access through litigation is not genuine, but rather an attempt to harass, control and intimidate her under the guise of custody proceedings. His misuse of the court process, misrepresentation and forum shopping are detrimental to the best interests of the minors, causing delay and instability.
15. It is therefore just and equitable that this Honourable Court: finds and declares that the Children's Court at Nairobi lacks jurisdiction to hear and determine the matter; grants the prayers sought in the pending application; and orders the transfer of Nairobi MCCHC E493 of 2025 to the Children's Court at Kiambu, being a court of competent jurisdiction, for hearing and determination in the best interests of the minors.
16. The application is opposed vide grounds of opposition dated 30<sup>th</sup> June, 2025 which is based on the grounds that:-
  1. The orders in Nairobi MCCHC E493 of 2025, were obtained regularly, having been granted ex parte on an interim basis.
  2. It is not in the best interest of the minors for the interim orders in Nairobi MCCHC E493 of 2025 to be stayed, as doing so will negatively impact the minors by denying them access to their biological father.
  3. The children's court at Nairobi has the requisite jurisdiction to hear and determine the suit in Nairobi MCCHC E493 of 2025.
  4. The Respondent herein, who is the biological father of the two minors and the plaintiff in Nairobi MCCHC E493 of 2025, resides in Donholm, which is located in Nairobi County.
  5. The rules on civil procedure, in the interests of justice, allows a party to institute a suit either in the place where the plaintiff or defendant resides.
  6. The Applicant herein resides with the minors at [Particulars withheld]Estate, Off Kamiti Road, which upon close examination, falls within Roysambu Constituency and is therefore within Nairobi County.



7. These minors currently attend school at [Particulars withheld] School Kiambu, a decision solely made by the Applicant against the consent, will or financial ability of the Respondent, who had expected the minors to report to school at Donholm in Nairobi, where they had previously been enrolled.
8. The place where a suit is to be filed is an administrative decision, and is governed by Section 15 of the *Civil Procedure Act*, Cap 21, that is determined by logistical reasons and convenience, but otherwise the Magistrates Courts have territorial jurisdiction throughout Kenya. See Visram J. (as he then was) in *Simon Kiarie vs Samwel Muigai Thuku* (2005) eKLR (Nairobi HCCA No. 332 of 2004).
9. The principal matters to be taken into consideration herein are, balance of convenience, questions of expense, interest of justice and possibilities of undue hardship likely to be suffered by the minors.
10. Section 3 of the current Magistrate's Court Act stipulates that in exercise of its judicial authority, a magistrate's court shall be guided by the principles specified under Articles 10, 159 (2) and 232 of *the Constitution*.
11. Article 53 (2) of *the Constitution* read together with Section 4 (2) and 3 of the *Children Act* clearly stipulates that a child's best interests is of paramount importance in every matter concerning the child. It is in the best interest of the children and in the interest of justice that the suit in Nairobi proceed at Nairobi to avoid any further delays that are likely to be occasioned, as the court in Nairobi is equally has jurisdiction to determine the matter.
12. The conduct of the applicant is that which is against the best interests of the children. The court in *ALAO v SOO* (Civil Appeal E067 of 2023) [2024] KEHC 13098 (KLR) stated that in children matters, it is essential for children's courts to thoroughly examine each case independently where jurisdictional questions are raised, ensuring that they consider the specific circumstances of each case and prioritize the involved child's best interests.
13. The interests of the children supersede those of the parties and must at all times be upheld.
14. The application has been made in bad faith to further delay the suit and to deny the respondent access, protection and care to his children.
15. The application is a waste of court's time and ought to be dismissed with costs.
17. The parties have not filed written submissions.

### **Analysis And Determination**

18. I have carefully considered the application before the court and the responses thereto.
19. This without going into the merit or otherwise of the issues between the couple this is forum shopping per excellence on the part of the Respondent. The court in Ruiru clearly explained itself on 20<sup>th</sup> February 2025 and gave him an olive branch instead of dismissing the suit for want of jurisdiction.
20. Instead of filing an application for transfer he deliberately withdrew the suit and filed the matter in Nairobi yet with full knowledge that he ought to have sought a transfer.
21. Being a children's matter, I shall not punish the Applicant but I direct as follows:-



- (a) The suit namely Nairobi Children's Case No. E493 of 2025 is hereby transferred to Kiambu Chief Magistrates court for hearing and determination.
- (b) Any interim orders for all intent and purposes are hereby vacated and or set aside.
- (c) Costs in the cause.

**DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAIROBI THIS 13<sup>TH</sup> DAY OF NOVEMBER 2025.**

**H K CHEMITEI**

**JUDGE**

