



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) [2026] KEHC 861 (KLR) (3 February 2026) (Judgment)

Neutral citation: [2026] KEHC 861 (KLR)

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

LN MUTENDE, J

FEBRUARY 3, 2026

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



Publication of the names of children in conflict with the law in charge sheets and court documents violates the children's right to privacy

The petition arose from criminal proceedings instituted against the two minors before the trial court in which their identities were disclosed. The court held that when a children matter was being conducted exposure of their names on charge sheets and cause lists was unprocedural. Initials should be used instead of full names. The court further found that the children's right of privacy was infringed as they were named in public without legal authority. On the question of the option of diversion having not been considered in the matter; the court held that cases may be diverted by the 2nd respondent (Director of Public Prosecutions) if they were petty and for juveniles and that the person in conflict with the law should have admitted the offence.

Reported by Kakai Toili

Constitutional Law – fundamental rights and freedoms – enforcement of fundamental rights and freedoms - right to privacy - children's right to privacy - whether the publication of the names of children in conflict with the law in charge sheets, cause lists, court registers and the Judiciary's e-filing and case tracking system violated their right to privacy and the principle of the best interests of the child – Constitution of Kenya, articles 31 and 53; Children Act (cap. 141), section 220; United Nations Convention of the Rights of a Child, 1989, article 16

Criminal Law – diversion - diversion in matters involving children in conflict with the law – applicability of diversion in matters involving children in conflict with the law - under what circumstances could diversion be applied in matters involving children in conflict with the law.

Brief facts

The petition arose from criminal proceedings instituted against the two minors before the trial court. DMM, whose apparent age was 16 years, was arrested and charged with stealing two pairs of panties valued at Kshs 500. Upon arraignment, his full name was disclosed in the charge sheet, court register, cause lists and the Judiciary e-filing and case tracking systems. He was detained at a police station, granted cash bail which his grandmother was initially unable to raise, and was later acquitted under section 210 of the Criminal Procedure Code.

BNM, also a minor, faced charges of defilement in two separate matters. In both cases, although described as a juvenile in the charge sheets, his full names were disclosed in court documents, registers and electronic systems. One of his cases concluded in an acquittal.

The petitioner contended that the public disclosure of the minors' identities, their detention in police facilities, and the alleged failure to consider diversion measures contravened the Constitution, the Children Act, and Kenya's obligations under the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. The petitioner thus sought declaratory and mandatory reliefs, including redaction and expungement of the minors' names from court records, prohibition of future disclosure, implementation of child-rights training, sealing of records, and compensation.

Issues

- i. Whether the publication of the names of children in conflict with the law in charge sheets, cause lists, court registers and the Judiciary's e-filing and case tracking system violated their right to privacy and the principle of the best interests of the child.
- ii. Under what circumstances could diversion be applied in matters involving children in conflict with the law?

Relevant provisions of the Law

Children Act (cap. 141)

Section 220 - Rights of a child offender

(1) A child offender has the right to privacy during arrest, the investigation of the offence and at any other stage of the cause of the matter.



(2) A person shall not in the course of arrest, investigation or trial of an offence connected with a child offender, or at any other stage of the course of the matter, release any information for publication that may lead to the identification of the child offender.

(3) Any person who contravenes subsection (2) commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding 12 months, or to both.

Held

1. Be it in international law or domestic law, children's rights were paramount which included non-disclosure of full names during trial. Revealing a child's name during trial could expose them to disgrace associated with circumstances of the case. The United Nations Convention of the Rights of a Child recognized the rights of the child's need to special safeguards including legal protection. The need for a child's privacy was spelled out in article 16 of the Convention. Therefore, when a children matter was being conducted exposure of their names on charge sheets and cause lists was unprocedural. Initials should be used instead of full names. Article 31 of the Constitution of Kenya guaranteed every person the right to privacy which included children.
2. In whatever action taken, the child's interest must be given the highest priority. Even if a child was in conflict with the law his best interest must be considered at the outset and must prevail. When a child was in conflict with the law, being vulnerable they must be protected so as not to be harmed. Courts must have humane faces hence should be friendly to the children, to protect them so that they were not harmed.
3. From the circumstances of the case, the 2nd respondent initiated the pleas that the children in issue were to answer. The charge sheets disclosed the full names of the minors. Procedurally, in the case tracking system (CTS) the person registering plea was expected to select the division, and in the instant case it was Magistrate's Court. The 2nd respondent was expected to select the case category from the drop-down menu which determined whether it would appear as initials or full name. That was determined by the case category. When the category MCSO was selected, it would automatically register the matter as a sexual offence involving an adult. But, when MCCHSO was selected, it meant the person in conflict with the law was a child/minor and the citation in the CTS would indicate the initials. There was an apparent error as to the mode of selection done.
4. The court was seized of jurisdiction to deal with the instant petition. Kenya was a signatory to the Convention of the Rights of a Child and the Children Act emphasized protection of children. Further, the supreme law of the land granted the court the power to hear and determine issues of violation of fundamental rights.
5. The 1st respondent was the one responsible for supervision of administration, management and support services of the Judiciary. Although the responsibility of supervision of the e-filing systems flowed directly from the ICT department, being a core and administrative service delivery of the courts, she was obligated to ensure that court registries operated in a manner that conformed to the law. Staff at the registries and the ICT department who supported in administering the e-filing platform should manage the system responsibly so as to ensure proper filing.
6. There may have been unintentional failure to notice the error committed by the 2nd respondent. However, the 2nd respondent argued that they corrected the error but, there was continued publishing of the names. In the order dated April 8, 2025 the 1st, 2nd and 3rd respondents were restrained from disclosing the identities of the subject BNM in court records, documents and proceedings as the case of DMM was concluded. The stated respondents were also required to redact the names of the minor from all documents related to his case but there was no compliance.
7. Both the 2nd and 1st respondents acted contrary to the best interest of the minors, contrary to what was provided for in the Constitution and Children Act. Their constitutional right of privacy was infringed as they were named in public without legal authority. Proceedings in question were for the offences of



- theft and defilement and by the children being named in a court of law, was a procedural impropriety and in fact unfair. That called for issuance of the order of *certiorari* sought to quash the unlawful publication of the names of the minors so that the public did not connect the children to the criminal proceedings.
8. On the question of the option of diversion having not been considered in the matter; cases may be diverted by the 2nd respondent if they were petty and for juveniles. However, there were principles that guided the process. The person in conflict with the law should have admitted the offence. Without voluntary admission of the charge the individual could not be compelled to agree to the process.
 9. DMM denied the charges and was ultimately acquitted. Views of the victims must be considered where the matter was complicated by the fact of the complainant having declined to engage in reconciliation. For that reason, the 2nd respondent could not be faulted. Although strongly encouraged, the 2nd respondent acting without the consent of the victim may raise legal questions.
 10. Judicial notice was taken of the National Kenya Police Force having initiated various programs for the police officers to understand children rights and in particular ensure that children who were in conflict with the law were protected. They were expected to ensure legal process concerning children including their privacy was upheld. The police were required to be cautious in handling of children cases. Disclosing the names by the police who forwarded the information to the 2nd respondent was failure to uphold the required confidentiality as mandated by the Children Act. The 2nd respondent failed in its duty of guiding the police on the importance of children privacy.
 11. Courts had the discretion of granting compensation as a remedy but all that depended on the circumstances of the case. The error was occasioned by selection of the wrong division which could be corrected by the ICT Directorate which was supervised by the 1st respondent.

Petition allowed.

Orders

- i. *The respondents violated the rights of the minors who were in conflict with the law by failing to protect their privacy and dignity.*
- ii. *An order of certiorari was issued directed to the 1st respondent to expunge the offending part of the minors' names on the charge sheets filed and cause lists in Nyabururu MCCR E1233/2023; Nyabururu MSO E012/2024 and MSO E013/2024 and the same was to be substituted by initials.*
- iii. *A mandatory order was issued directed to the 5th respondent to implement children rights training on proper handling of matters involving protection of minors' rights according to the Children Act.*
- iv. *An injunction was ordered prohibiting the respondents from disclosing any minor's identity in legal proceedings unless sanctioned by the court.*
- v. *Parties to bear their own costs.*

Citations

Cases

1. Anarita Karimi Njeru v Republic (Miscellaneous Criminal Application 4 of 1979; [1979] KEHC 30 (KLR)) — Explained
2. CMM (Suing as the Next of Friend of and on Behalf of CWM) & 6 others v Standard Group & 4 others (Petition 13 (E015) of 2022; [2023] KESC 68 (KLR)) — Explained
3. Republic v DMM (Criminal Case 18 of 2010; [2020] KEHC 6946 (KLR)) — Applied

Statutes

1. Children Act (cap 141) — section 11(1); 220; 220(1) — Interpreted
2. Constitution of Kenya — article 22, 23, 27, 28, 29, 31, 50(8); 53; 53(2); 157(6); 157(11) — Interpreted
3. Criminal Procedure Code Act (cap 75) — section 210 — Interpreted
4. Sexual Offences Act (cap 63A) — section 8(1); 8(2) — Interpreted

International Instruments



1. United Nations Convention on the Rights of the Child (UNCRC), 1989 — article 3, 16

Advocates

None mentioned

JUDGMENT

1. The Law Society of Kenya (LSK) a statutory body with the mandate to protect public interest and promote the administration of justice lodged the instant petition upon the basis that the Respondents, institutions entrusted with the protection of children in conflict with the law have subjected them to violation, public limitation and unlawful exposure contrary to the *Children Act*, the *Constitution* and international obligations.
2. The 1st Respondent is sued for being responsible for ensuring that judicial processes comply with the *Constitution*; the 2nd Respondent is responsible for prosecutions which should comply with the *Constitution*, including protection of minors' rights to privacy, dignity, and fair administrative action; the 3rd Respondent who is responsible for ensuring police conduct conforms to the Constitution is sued as he allowed unlawful arrest and detention of minors to occur without consideration to their best interest, and failure to protect their privacy and dignity during investigations; the 4th Respondent is sued in her representative capacity to the State as its legal advisor; and, the 5th Respondent is sued for not overseeing and ensuring sensitization on the rights of the minors in conflict with the law amongst police officers.
3. The context in which the Petition is brought is that DMM a minor was in conflict with the law hence arraigned for stealing two (2) pairs of panties valued at Kshs.500/-. That the police accompanied by the Complainant searched his grandmother's home and at a nearby forest recovered a bag containing several inner wears including two of which had been reported stolen. In the result DMM was arrested on 20th August, 2023, and detained at Miharati Police Station. He was taken to court on 21st August, 2023, and due to the need for age assessment the plea was deferred and he was remanded at the Miharati Police Station until 22nd August, 2023.
4. The plea was read on 24th August, 2023, and on pleading not guilty he was granted a cash bail of Kshs.10,000/- which his grandmother couldn't raise, therefore he was remanded until 28th August, 2023, when his grandmother bailed him out. That at the time DMM's full name was disclosed on the charge sheet, court register, cause lists, judiciary e-filing and cause list system.
5. On the part of BNM who was in conflict with the law, charged under the *Sexual Offences Act* and his full names were disclosed on the charge sheets, court register, cause lists, judiciary e-filing and cause list system which compromised his rights and dignity. A case that concluded with an acquittal.
6. It is therefore urged that the Respondents violated Articles 27, 28, 29, 50(8) and 53 of the *Constitution* by failing to protect dignity and best interests of the minors hence the prayer for issuance of a mandatory order compelling the 1st Respondent to ensure that all future case documents involving minors in conflict with the law redact their names to initials or other suitable measures to protect their identities.
7. An order of certiorari to issue to quash the unlawful publication of the full names DMM and BNM on the charge sheets and public cause lists in *Nyabururu MCCR E1233/2023*; *Nyabururu MSO E012/2024* and *Nyabururu MSO E013/2024*.
8. To order the 2nd and 3rd Respondents to implement immediate measures, including adoption of best process on the proper handling of cases involving minors to prevent further violations.



9. That all records of the minors' full names published in violation of their privacy rights be expunged from the court records.
10. A mandatory order to issue requiring the 5th Respondent to implement child rights training, with a specific focus on protecting minors' privacy in legal processes in accordance with the [Children Act, 2022](#) and International Law.
11. An order to issue for compensation of Kshs.5,000,000/- per minor or such amounts as the court would find fair for unlawful detention, prosecution, and violation of their rights to privacy, dignity and fair administrative action for resulting psychological trauma.
12. A judicial declaration to issue that in cases where minors are acquitted, their records shall remain sealed permanently, and even in cases of conviction, the records shall remain sealed after serving their sentences.
13. An injunction to issue prohibiting the Respondents from disclosing any minors' identity in any future legal proceedings unless sanctioned by the court. And, costs of the petition be borne by the Respondents.
14. The Petition is supported by an affidavit deposed by Florence Muturi the CEO of the LSK who avers that the Petitioner is concerned with the unlawful and unconstitutional practices by the Respondents including public disclosure of minors' identities in court documents and proceedings, failure to comply and the violation of minors' rights to privacy, dignity, fair administrative action, and, best interests of the child as enshrined in the [Constitution](#).
15. The Petition was canvassed through written submissions where the Petitioner urges that the court did issue interim orders requiring redaction of the minors' names administration actions that were not taken hence amount to willful defiance of court directives and statutory protections. That the Petitioner formally requested the 2nd Respondent to consider diversion under Section 11(1) of the [Children Act](#), and dispute investigatory deficiencies and the child's vulnerability, it was declined and subjected the minor to prolonged and unnecessary psychological trauma.
16. That as a direct consequence of the ODPP's refusal to consider diversion BNM endured 462 days of detention in Nyahururu Police Station Cells not in a juvenile facility despite the court directive to place him in a juvenile facility which resulted into unshielded exposure to adult detainees in a station that lacks a functional child offender's unit, a confinement that was not only unlawful under the [Children Act](#) but psychologically corrosive.
17. That there was selective compliance of the court order as the charge sheets were amended to replace full names with initials but in court they were referred to by name in judicial decisions and cause lists which was not in their best interest.
18. That the violations are not in dispute which is a call to anchor Kenya's criminal justice system in child sensitive practices and to affirm the irreducible dignity of every child regardless of accusation or outcome.
19. That the court may choose to treat this petition as another procedural file or it may find that no child shall be tried in the shadows of public shame.
20. Notably, only the 2nd and 5th Respondents filed submissions where it is submitted by the 2nd and 5th Respondents that the minor DMM was arrested by the 5th Respondent and the file presented to the 2nd Respondent for consideration of charges relating to alleged theft of women's underwear. After review of the file, the 2nd Respondent proceeded to charge him as evidence met the threshold required.



- Evidence was presented but the case culminated in an acquittal under Section 210 of the *Criminal Procedure Code*.
21. That the 2nd Respondent amended the charge sheet and redacted the names of the minors immediately the error was detected. That an acquittal does not retroactively invalidate the decision to charge which is made based on the evidence available.
 22. That BNM was charged with Defilement contrary to Section 8(1)(2) of the *Sexual Offences Act*, an offence classified as grave and non-divertible under the *Children Act*, 2022, the ODPP Diversion Policy and the guidelines on prosecuting sexual offences.
 23. That as provided by Article 157(6) of the *Constitution* powers of the 2nd Respondent to charge are unfettered. Constitutional limits to the mandate under Article 157(11) of the *Constitution*, public interest, interests of administration of justice, and the need to prevent abuse were adhered to as there is no evidence placed before court showing bad faith, malice or abuse of process.
 24. That there was no violation of Article 53 or the *Children Act*. That the Petitioner appears to conflate prosecutorial discretion with administrative handling of records, which is outside the purview of the 2nd and 5th Respondents. That the 2nd Respondent amended the charge sheets, subject to the Petition at the earliest opportunity when the error was noted. That the names of the minors have been appearing on the CTS and on cause lists which is a matter out of control of the 2nd and 5th Respondents.
 25. That the prosecution of the minors perse was not unconstitutional as required safeguards, namely presence of a guardian, legal representation, child friendly procedures, bail considerations and expedite trials were complied with.
 26. That diversion is not mandatory under the *Children Act* as it depends on the nature of the offence; views of victims, risk assessment, security considerations and community interest and it excludes sexual offences, offences involving violence and offences where complainants object to diversions like in the case of DMM where the complainant objected, a fact that can be established in the lower court record.
 27. That the publication of names in court cause lists, e-filing system, registry entries, court records are exclusively the function of the Judiciary but not ODPP.
 28. As to the declarations sought, it is urged that no violations have been established against the 2nd and 5th Respondents. That compensation cannot issue where no unlawful act has been proven. That the prayer of sealing of the documents concerns the judicial administration.
 29. The instant Petition emanates from action taken by the office of the Director of Public Prosecutions, 2nd Respondent, following charge sheets presented to court. In the case of *Republic v DMM* the apparent age of the subject in conflict with law was given as 16 years yet the full name of the minor was disclosed on the charge sheet. The charge was presented before the court which noted at the outset that the individual appeared to be a minor. Following the observation, the court directed the subject to undergo age assessment. To that end, the minor was to be remanded at the Nakuru Children Home. The minor was accused of having stolen 2 panties valued at Kshs.500/-. The arrest having been effected by the 5th Respondent.
 30. As regards BNM, he had two cases. In the first case he was accused of Defilement contrary to Section 8(1)(2) of the *Sexual Offences Act*, where the Complainant was a child aged 7 years. The charge sheet expressly stated that he was a juvenile. Upon age assessment the report indicated that he was below 18 years.



31. BNM was again stated to have violated the law by allegedly molesting another victim. The charge was Defilement contrary to Section 8(1)(2) of the [Sexual Offences Act](#) where the victim was 11 years old. In the charge sheet, he was described as a juvenile but his full names were disclosed.
32. I have considered the Petition, rival submissions and authorities relied on. Be it in the International Law or Domestic Law, children's rights are paramount which includes non-disclosure of full names during trial. Revealing a child's name during trial can expose them to disgrace associated with circumstances of the case. The [United Nations Convention of the Rights of a Child](#) recognizes the rights of the child's need to special safeguards including legal protection. Article 3 of the Convention stipulates thus;
1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
 2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
 3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.
33. The need for child's privacy is spelled out in Article 16 of the Convention that provides thus;
1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
 2. The child has the right to the protection of the law against such interference or attacks.
34. Therefore, when a children matter is being conducted exposure of their names on charge sheets and cause lists is unprocedural. Initials should be used instead of full names. Article 31 of the [Constitution](#) of Kenya, 2010, guarantees every person the right to privacy which includes children.
35. Article 53(2) of the [Constitution](#) provides that;
- (2) A child's best interests are of paramount importance in every matter concerning the child.
36. In [CMM \(Suing as the next of friend and on behalf of CWM\) & 6 Others v Standard Group & 4 Others](#) (Petition 13 (E015 of 2022) [2023] KESC 68 (KLR)) the Supreme Court stated as follows:
- “Finally, on limitation under the repealed [Children Act](#), the general principles regarding proceedings in the Children's Court were set out in the repealed section 76(5) as follows:“(5)In any proceedings concerning a child, whether instituted under this Act or under any written law, a child's name, identity, home or last place of residence or school



shall not, nor shall the particulars of the child's parents or relatives, any photograph or any depiction or caricature of the child, be published or revealed, whether in any publication or report (including any law report) or otherwise.” [our emphasis].”

37. In whatever action taken, the child's interest must be given the highest priority. Even if a child is in conflict with the law his best interest must be considered at the outset and must prevail.
38. Section 220(1) of the *Children Act*, 2022, provides that;
 - (1) A child offender has the right to privacy during arrest, the investigation of the offence and at any other stage of the cause of the matter.
39. It is clear that when a child is in conflict with the law, being vulnerable they must be protected so as not to be harmed. Courts must have humane faces hence should be friendly to the children, to protect them so that they are not harmed.
40. Circumstances of this case reveal that the 2nd Respondent initiated the pleas that the children in issue were to answer. The charge sheets disclosed the full names of the minors. Procedurally, in the case tracking system (CTS) the person registering plea is expected to select the division, and in the instant case it was Magistrate's Court. The 2nd Respondent was expected to select the case category from the drop-down menu which determines whether it will appear as initials or full name. This is determined by the case category. When the category MCSO is selected, it will automatically register the matter as a sexual offence involving an adult. But, when MCCHSO is selected, it means the person in conflict with the law is a child/minor and the citation in the CTS will indicate the initials. There was an apparent error as to the mode of selection done.
41. At the interim stage an order was granted directing the 1st, 2nd and 3rd Respondents to amend and redact the charge sheets in compliance with Section 220 of the *Children Act*, 2022. It is urged by the 2nd Respondent that complied and the fact that the names of the minors continued appearing in the CTS and Cause lists was not within their control.
42. Notably, the 4th Respondent appeared in the matter representing the 1st, 3rd and 4th Respondents where grounds of opposition were filed opposing the Notice of Motion at the interlocutory stage but did not turn up thereafter.
43. The Petitioner seeks various declaratory orders. Article 22 and 23 of the *Constitution* provide thus;
 - 22 Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.
 - (1) or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.
 - (2) In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by—
 - (a) a person acting on behalf of another person who cannot act in their own name;
 - (b) a person acting as a member of, or in the interest of, a group or class of persons;
 - (c) a person acting in the public interest; or
 - (d) an association acting in the interest of one or more of its members.



23(1) The High Court has jurisdiction, in accordance with Article 165, to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights.

(3) In any proceedings brought under Article 22, a court may grant appropriate relief, including—

- (a) a declaration of rights;
- (b) an injunction;
- (c) a conservatory order;
- (d) a declaration of invalidity of any law that denies, violates, infringes, or threatens a right or fundamental freedom in the Bill of Rights and is not justified under Article 24;
- (e) an order for compensation; and
- (f) an order of judicial review.

44. In *Anarita Karimi Njeru v Attorney General* [1979] KLR 154 the court held that;

“We would however again stress that if a person is seeking redress from the High Court on a matter which involves a reference to the *Constitution*, it is important (if only to ensure that justice is done to his case) that he should set out with reasonable degree of precision that of which he complains, the provision said to be infringed and the manner in which they are alleged to be infringed.”

45. This court is hence seized of jurisdiction to deal with the instant Petition. Kenya is a signatory to the *Convention of the Rights of a Child* (CRC) and the *Children Act* emphasizes protection of children. Further, the supreme law of the land grants the court the power to hear and determine issues of violation of fundamental rights.

46. The Petitioner seeks a mandatory order compelling the 1st Respondent to ensure future case documents involving minors in conflict with the law redact their names to initials or other suitable measures to protect their identities. Section 220 of the *Children Act* provides that;

- (1) A child offender has the right to privacy during arrest, the investigation of the offence and at any other stage of the cause of the matter.
- (2) A person shall not in the course of arrest, investigation or trial of an offence connected with a child offender, or at any other stage of the course of the matter, release any information for publication that may lead to the identification of the child offender.
- (3)

47. The 1st Respondent is the one responsible for supervision of administration, management and support services of the Judiciary. Although the responsibility of supervision of the e-filing systems flows directly from the ICT department, being a core and administrative service delivery of the courts, she is obligated to ensure that court registries operate in a manner that conforms to the law. Staff at the registries and the ICT department who support in administering the e-filing platform should manage the system



responsibly so as to ensure proper filing. In the instant matter there may have been unintentional failure to notice the error committed by the 2nd Respondent.

48. However, the 2nd Respondent argues that they corrected the error but, there was continued publishing of the names. Indeed, there were court orders dated 25th September, 2024 and 8th April, 2025 respectively. According to the order given by the court on the 25th September, 2024, the cases were to be stayed until the charge sheets were amended and redacted in compliance with Section 220 of the [Children Act](#). The cases were only to proceed after compliance. The cases however proceeded. No objection was raised.
49. In the order dated 8th April, 2025 the 1st, 2nd and 3rd Respondents were restrained from disclosing the identities of the subject BNM in court records, documents and proceedings as the case of DMM was concluded. The stated Respondents were also required to redact the names of the minor from all documents related to his case but there was no compliance.
50. Regarding issuance of the orders of certiorari to quash the unlawful publication of the names of the minors. Both the 2nd and 1st Respondents acted contrary to the best interest of the minors, contrary to what is provided for in the [Constitution](#) and [Children Act](#). Their constitutional right of privacy was infringed as they were named in public without legal authority. Proceedings in question were for the offences of theft and defilement and by the children being named in a court of law, was a procedural impropriety and in fact unfair. This calls for issuance of the order sought so that the public does not connect the children to the criminal proceedings.
51. On the question of the option of diversion having not been considered in the matter; cases may be diverted by the 2nd Respondent if they are petty and for juveniles. But, there are principles that guide the process. The person in conflict with the law should have admitted the offence. Without voluntary admission of the charge the individual cannot be compelled to agree to the process.
52. DMM denied the charges and was ultimately acquitted. Views of the victims must be considered where the matter is complicated by the fact of the Complainant having declined to engage in reconciliation. For that reason, the 2nd Respondent cannot be faulted. Although strongly encouraged, the 2nd Respondent acting without the consent of the victim may raise legal questions.
53. Judicial notice is taken of the National Kenya Police Force having initiated various programs for the police officers to understand children rights and in particular ensure that children who are in conflict with the law are protected. They are expected to ensure legal process concerning children including their privacy is upheld. The police are required to be cautious in handling of children cases. Disclosing the names by the police who forwarded the information to the 2nd Respondent was failure to uphold the required confidentiality as mandated by the [Children Act](#). Apparently the 2nd Respondent failed in its duty of guiding the police on the importance of children privacy.
54. As to the question of compensation, in the case of [CMM](#) (*supra*) the Supreme Court stated that;

“Under common law principles, an injured party was entitled to damages for the loss and injury suffered under private law causes of action, like in tortious claims. Compensation for personal loss depended on proof of such loss or damage. However, arising out of the violation of constitutional rights and fundamental freedoms of an individual under public law, the nature of the damages awardable were broadly compensatory or vindicatory, as should be apparent from the list of examples of reliefs in article 23 of the [Constitution](#). While it was not necessary to prove loss or damage in cases of constitutional rights violations, the court could consider the extent, nature, gravity and immensity of harm suffered by the



aggrieved party when determining the appropriate remedy. In deserving cases, the redress may be in the form of an award of damages to compensate the victim. In some cases, a suitable declaration, an injunctive or conservatory order, or an order of judicial review would suffice to vindicate the right.”

55. Courts have the discretion of granting compensation as a remedy but all this depends on the circumstances of the case. The error was occasioned by selection of the wrong division which can be corrected by the ICT Directorate which is supervised by the 1st Respondent.
56. In the upshot, the Petition is meritorious and is allowed. In the result, I order thus;
- a. The Respondents violated the rights of the minors who were in conflict with the law by failing to protect their privacy and dignity.
 - b. An order of certiorari be and is hereby issued directed to the 1st Respondent to expunge the offending part of the minors’ names on the charge sheets filed and Cause lists in *Nyabururu MCCR E1233/2023*; *Nyabururu MSO E012/2024* and *MSO E013/2024* and the same be substituted by initials.
 - c. A mandatory order be and is hereby issued directed to the 5th Respondent to implement children rights training on proper handling of matters involving protection of minors’ rights according to the *Children Act*.
 - d. An injunction is ordered prohibiting the Respondents from disclosing any minor’s identity in legal proceedings unless sanctioned by the court.
 - e. By the nature of the Petition, parties to bear their own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 3RD DAY OF FEBRUARY, 2026.

L.N. MUTENDE

JUDGE

