



**FNM v JML (Miscellaneous Application E004 of 2025)  
[2026] KEHC 1558 (KLR) (Family) (13 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1558 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
MISCELLANEOUS APPLICATION E004 OF 2025  
H NAMISI, J  
FEBRUARY 13, 2026**

**BETWEEN**

**FNM ..... APPLICANT**

**AND**

**JML ..... RESPONDENT**

**RULING**

1. Before the Court is Originating Summons dated 7 January 2025 in which the Applicant seeks the following:
  - i. Spent;
  - ii. That this Honourable Court be pleased to register as an order of this Court the orders of the Oslo District Court, Kingdom of Norway made on 15 December 2023;
  - iii. That this Honourable Court be pleased to make any further or other orders as it may deem fit and just in the circumstances so as to effect the orders of the Oslo District Court, Kingdom of Norway made on 15 December 2023;
  - iv. That the costs of this application be in line with the orders that were made by the Oslo District Court, Kingdom of Norway made on 15 December 2023.
  
2. The application seeks to mirror the Norwegian orders in Kenya, effectively granting the Applicant sole parental responsibility and actual custody within this jurisdiction. This is intended to ensure that the legal protections afforded to the children in their country of habitual residence (Norway) remain enforceable and recognized when the children visit their father in Kenya. The legal basis invoked by the Applicant includes the *Foreign Judgments (Reciprocal Enforcement) Act* (Chapter 43 of the Laws of Kenya), the *Children Act*, and Article 53 of the *Constitution*.



3. The matter touches upon the parental responsibility, custody, and welfare of two minors: CGM, born in August 2010, and RKM, born in August 2017. The parties, both Kenyan nationals, relocated to Norway between 2012 and 2013. The younger child was born in Norway, while CGM joined the parents there in 2015. The domestic environment deteriorated, leading to the cessation of cohabitation in the autumn of 2020. By the autumn of 2021, the Respondent returned to Kenya, leaving the children in the care of the Applicant in Oslo.
4. From the pleadings filed, the Norwegian Child Welfare Service (Barnevernet) conducted multiple investigations into the family, following reports of violence. Specifically, allegations were made that the Respondent had subjected both the Applicant and the eldest child, Chosen, to physical violence. Criminal proceedings were initiated in Oslo District Court, but the Respondent failed to attend, having already relocated to Kenya. This led to a series of custody litigations in Norway. Initially, in December 2022, the Norwegian court maintained joint parental responsibility, assuming contact with the father was possible. However, by 2023, the circumstances had shifted. The father had become unreachable, and the children expressed a strong desire to have no contact with him.
5. The Oslo District Court's judgment of 15th December 2023 culminated in the following orders, which the Applicant now seeks to domesticate in Kenya:
  - i. FNM shall have sole parental responsibility for both children;
  - ii. Actual custody is vested in the mother, the children reside with her in Norway;
  - iii. The Respondent is ordered to pay NOK 18,437.50 to the mother;
  - iv. The court recorded the children's explicit wish to remain solely under their mother's care.
6. The Applicant deposes that while she recognizes the father's right to see the children, she is hesitant to allow them to visit Kenya without the legal security of the Norwegian orders being adopted locally. She fears that without a Kenyan order mirroring the Norwegian judgment, the Respondent might attempt to retain the children in Kenya or challenge her sole authority over their welfare.

### **Analysis & Determination**

7. Before delving into the substantive legal principles, the Court must address the adequacy of notice. The record includes an Affidavit of Service sworn by Nathan Mwenda Mutwiri on several occasions including 12 January 2026. The deponent states that he served the Hearing Notice via three distinct modes: physical delivery at Ruiru Town on 6 January 2026, WhatsApp instant messaging, and electronic mail. The totality of the service methods and the various instances when the Respondent has been served leaves no doubt that the Respondent was aware of these proceedings and chose not to appear.
8. The Applicant's primary prayer is for the registration of the Norwegian judgment under the *Foreign Judgments (Reciprocal Enforcement) Act*. However, a rigorous statutory analysis reveals that this path is legally untenable for two primary reasons: the lack of a reciprocal arrangement with Norway and the specific exclusion of child custody matters from the Act's scope.
9. The *Foreign Judgments (Reciprocal Enforcement) Act* is predicated on the doctrine of reciprocity. It applies only to judgments from countries that the Cabinet Secretary has designated as providing substantial reciprocity of treatment to Kenyan judgments. The statutory framework is designed to facilitate the seamless enforcement of commercial and money judgments between friendly nations.



10. The Kingdom of Norway is not a reciprocating country under the statute. While Norway has reciprocal arrangements with the United Kingdom, those arrangements do not automatically extend to Kenya post-independence. Consequently, a judgment from the Oslo District Court cannot be registered under *Foreign Judgments (Reciprocal Enforcement) Act* because the mandatory prerequisite of a reciprocal designation has not been met.
11. Even if Norway were a reciprocating country, the application would face a second, insurmountable hurdle. Section 3(3)(e) of the *Foreign Judgments (Reciprocal Enforcement) Act* explicitly states that the Act does not apply to judgments in proceedings in connection with the custody or guardianship of children.
12. The rationale for this exclusion is deeply rooted in the concept of national sovereignty and the unique *parens patriae* jurisdiction of the domestic court. While money judgments represent a debt between individuals, a custody order represents the state's intervention into the welfare of a minor within its borders. Kenyan lawmakers have consistently maintained that the determination of a child's best interests must be a fresh and independent inquiry conducted by the local court, rather than a mechanical registration of a foreign decree.
13. This statutory bar was centrally analyzed in the case of *Kansagra v Kansagra* KEHC 3488, where the Court held that a judgment from the Supreme Court of India regarding custody was not registrable under the Act, both because India was not a reciprocating country and because of the specific exclusion in Section 3(3)(e). The Court emphasized that child custody matters are inherently excluded from the registration regime provided by the *Act*. Therefore, the Applicant's prayer for registration under the *Foreign Judgments (Reciprocal Enforcement) Act* must be dismissed for lack of jurisdiction.
14. The failure of the application under the Act does not, however, mean that the Norwegian judgment is of no effect in Kenya. Kenyan law recognizes two pathways for foreign judgments: the statutory path for reciprocating nations and the common law path for all other jurisdictions.
15. Pursuant to Section 3 of the *Judicature Act*, the High Court exercises its jurisdiction in accordance with the *Constitution*, written laws, and the substance of common law. It is a well-established principle of Kenyan private international law that a foreign judgment from a non-reciprocating country is enforceable in Kenya as a claim in common law. The Court of Appeal in *Jayesh Hasmmukh Shah v Navin Haria & Another* eKLR reaffirmed that such a judgment creates a new cause of action, and the judgment creditor may sue upon it in a Kenyan court.
16. The common law recognition of foreign judgments is grounded in the doctrine of comity. Comity is neither a matter of absolute obligation nor mere courtesy; it is the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard for international duty and convenience.
17. In the Supreme Court decision of *Ingang'a & 6 others v James Finlay (Kenya) Limited* KESC 22, the Court held that while foreign judgments are not automatically enforceable, they should be examined and, where appropriate, given effect to by Kenyan courts to prevent the re-litigation of already settled matters and to uphold the rule of law across borders. In family law, comity is vital to preventing international child abduction and ensuring that custody arrangements made by the court of the child's habitual residence are respected globally.
18. For the Norwegian judgment to be recognized by this Court under common law, it must satisfy several criteria. First, the foreign court must have had jurisdiction over the parties according to Kenyan rules of conflict of laws. Second, the judgment must be final in the jurisdiction where it was rendered. Third, the proceedings must not have been opposed to natural justice, meaning the defendant must have had



- notice and an opportunity to be heard. The judgment must not have been obtained by fraud. Finally, the enforcement of the judgment must not be contrary to Kenyan public policy.
19. The Oslo District Court judgment meets these requirements. The children and the mother were resident in Norway, granting that court primary jurisdiction. The Respondent was served through substituted means as permitted under Norwegian law when his address in Kenya was unknown. The judgment is final as to the current custody status. Crucially, the judgment aligns with Kenyan public policy regarding the protection of children.
  20. In all matters involving children, the Court's inquiry is steered by the best interests of the child principle, as enshrined in Article 53 of the *Constitution*. This constitutional mandate overrides any statutory limitation and serves as the ultimate benchmark for judicial action.
  21. The Applicant specifically requests that the Oslo orders be adopted as a mirror order. In international family law, a mirror order is a local judicial order that reflects the terms and conditions set by a court in another jurisdiction.
  22. Mirror orders are particularly crucial in cases involving a non-signatory to the Hague Convention on the Civil Aspects of International Child Abduction, such as Kenya. Because the automatic return mechanisms of the Hague Convention are not available, parents who relocate or allow visits to Kenya often seek mirror orders to ensure that the custody status quo is legally protected within the Kenyan borders.
  23. The Indian Supreme Court, in the *Kansagra litigation*, provided a comprehensive definition:

“The object of a mirror order is to safeguard the interest of the minor child in transit from one jurisdiction to another, and to ensure that both parents are equally bound in each State”.
  24. The order ensures that the local courts are aware of the arrangements made in the child's habitual residence and that the rights of the custodial parent are not impaired by the move across frontiers.
  25. Although the Court found that it could not register a foreign custody order under Cap 43 in *Kansagra v Kansagra* KEHC 3488, it did not hold that it was powerless to act. Rather, the Court clarified that it could exercise its original and unlimited jurisdiction under Article 165(3) of the *Constitution* to make an original Kenyan order that effectively mirrors the foreign judgment.
  26. By issuing an independent order under the *Children's Act* 2022 that reflects the terms of the Norwegian judgment, this Court is not enforcing Norwegian law, but rather exercising its own protective jurisdiction to ensure the children's welfare while they are within Kenya. This upholds international comity while remaining firmly anchored in Kenyan law.
  27. After a comprehensive review of the application, the supporting evidence, and the relevant Kenyan and international legal principles, while the Court cannot grant the specific prayer for registration under *Foreign Judgments (Reciprocal Enforcement) Act*, it exercises its inherent jurisdiction and its broad powers under the *Children Act* to provide the substantive relief necessary to protect the welfare of the minors.
  28. Accordingly, I hereby order as follows:
    - i. The Application for the registration of the Oslo District Court orders under the *Foreign Judgments (Reciprocal Enforcement) Act* is hereby dismissed for want of statutory jurisdiction.
    - ii. Pursuant to Article 53(2) of the *Constitution* and Section 134 of the *Children Act*, and in recognition of the judgment of the Oslo District Court dated 15 December 2023 (Case No.



23-150082TVI-TOSL/03), this Court hereby grants sole parental responsibility and actual custody of the minors, CGM and RKM, to the Applicant.

iii. This order shall serve as a Mirror Order to the Oslo District Court judgment and is enforceable within the Republic of Kenya as an original order of this Court.

iv. Each party shall bear their own costs.

**DATED AND DELIVERED AT NAIROBI THIS 13 DAY OF FEBRUARY 2026**

**HELENE R. NAMISI**

**JUDGE OF THE HIGH COURT**

Delivered on virtual platform in the presence of:

For Applicant: Mr Mwenda Mutwiri

For the Respondent: N/A

Court Assistant: Lucy Mwangi

