



**DB v OLN (Civil Appeal E115 of 2025)  
[2026] KEHC 3327 (KLR) (Family) (13 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 3327 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
CIVIL APPEAL E115 OF 2025  
PM NYAUNDI, J  
MARCH 13, 2026**

**BETWEEN**

**DB ..... APPLICANT**

**AND**

**OLN ..... RESPONDENT**

**RULING**

- On the 24<sup>th</sup> November 2025, the following orders were made in the presence of Counsel of both parties.  
The applicant to have access twice a week, every Monday and Friday at 4pm EAT, Effective 24<sup>th</sup> November 2025. Mr. George Ginnono to be present on all calls.  
Mention on 20<sup>th</sup> January 2026 to confirm compliance and review of orders of access  
The appellant to share recurring link with Directorate of Children Services and Counsel for the Respondent
- On 20<sup>th</sup> January 2026 the appellant reported that he had not had access to the minor. Counsel for the respondent who was present informed the Court then that the timing was not convenient for the Child.
- I found this explanation to be unsatisfactory and invited the applicants to move the Court for enforcement of the order. The applicant has filed application dated 2<sup>nd</sup> February 2026 and seek orders compelling the return of the minor at the cost of the respondent and the support and assistance of Director Children Services, Interpol Kenya, Directorate of Criminal Investigation- Child Protection Unit, Ministry of Foreign Affairs and the Kenyan High Commission in Canada.



4. The application is supported by the Affidavit of the applicant sworn on 2<sup>nd</sup> February 2026. He asserts that the respondent has failed on numerous occasions to comply with the Court orders herein. He is apprehensive about the well-being of the Child. It is not in the interests of the minor to be denied access to a parent. He has parental rights that are being violated and the Court should protect.
5. He is prepared to go to Canada and travel back with the minor.
6. The Respondent opposes the application and has filed both a preliminary objection and replying affidavit dated 24<sup>th</sup> February 2026. It is submitted in the Preliminary Objection that the Court lacks jurisdiction.
7. She concedes that she proposed the time when the appellant would have virtual access. However, the time agreed upon is not convenient for the Child, it is 5 am and it is too early for the Child. She has asked the appellant that they agree on an alternative time but this has not been possible.
8. She urges that she is prepared to ensure that the appellant has access only that the time should be adjusted to suit the child.
9. Parties made oral submissions. On the part of the appellant it is submitted that the preliminary objection does not meet the legal threshold and reference is made to the decision in *Gencel v Goga* [2023] KEHC 18429 (KLR) which in citing the locus classicus case *Mukisa Biscuits Manufacturing Ltd –v- West End Distributors* (1969) EA 696 reiterated the principles that should guide courts in determining the merits of a preliminary objection.
10. It is submitted that the Court has the jurisdiction to grant the orders sought and reliance is placed on the decisions in; *ALAO v SOO* (Civil Appeal E067 of 2023) [2024] KEHC 13098 (KLR) (Family) (28 October 2024) (Judgment); *SNK v QAO* [2025] KEHC 16830 (KLR); *MTKO v JMR* [2025] KEHC 3681 (KLR) and *SMM v ANK* [2022] KEHC 1043 (KLR)
11. The respondent in her submissions asserts that the Court lacks jurisdiction and ought therefore to down its tools. It is submitted that the Preliminary Objection is merited and should be upheld. Reference is made to the *Mukisa Biscuit* case (Supra). It is further submitted that the application must fail as the noncompliance was occasioned by the impracticability of the Order. It is not possible for the Child to be on the call at 5am as directed. She asserts that she is prepared to facilitate access once the parties are able to agree on a better time.

### **Analysis and Determination.**

12. All pleadings, submissions and factors considered, I consider this to be the pertinent issues for determination-
  - a. Whether the Court has jurisdiction?
  - b. Whether it is in the best interests of the Child to Order for her return from Canada?
  - c. Who should pay the costs of this application?
13. On jurisdiction, the Court of Appeal in the seminal decision in the case of *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] KECA 48 (KLR) established that jurisdiction is everything and without it a court is compelled to lay down its tools. As noted above, it is argued that the Court lacks jurisdiction because the parties are outside its jurisdiction. The respondent is in Canada, while the appellant is said to operate between Kenya and the UK.



14. The issue of the jurisdiction of the Court in relation to children's matters was soundly articulated by Hon. Emukule J. in the case of Republic v Senior Resident Magistrate Mombasa ex parte HL & another [2016] eKLR when he stated thus-

The fundamental question here is the rights of the child. Under *the Constitution* of Kenya, and the relevant legislation, namely the *Children Act* (Cap 141, Laws of Kenya), which embodies and gives effect to the International Convention on the Rights of the Child, and the African Charter on the Rights of the Child, the Courts of Kenya have the jurisdiction to give effect to the rights of the child, irrespective of the origin of such child. It does not matter that child came from the howling sands and winds of the Sahara Desert, the depths of the Congo forests, the Miombo woodlands of Tanzania, the windswept Drakensberg mountains of the South of the continent, the steppes of outer Mongolia or the fringes of the world's oceans and seas, the courts of Kenya will give shelter and succour to that child. Under our Constitution, the rights of the child are paramount. It would be unworthy of our Constitution if jurisdiction were denied to our courts.

15. On almost similar facts as in the instant case the Court in ALAO v SOO (Civil Appeal E067 of 2023) [2024] KEHC 13098 (KLR)(Family) (28 October 2024) (Judgement) determined that a Court would have jurisdiction.

16. For the foregoing reasons, the preliminary objection is dismissed.

17. The 2<sup>nd</sup> issue for determination is whether it is in the best interests of the Child to order her return to Kenya and into the custody of her father pending the hearing and determination of the appeal. *The Constitution* demands at Article 53 (2) that:

(2)A child's best interests are of paramount importance in every matter concerning the child.

18. Similarly, the *Children Act* at section 8(1) provides as follows:-

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. (Own emphasis)

19. The respondent has demonstrated extreme disrespect and disregard for the Court and its orders. She is the one who, through her counsel, proposed the time when the appellant would have virtual access. It is rather disingenuous of her to turn around and now state that the time is not convenient. It is evident that she does not intend to allow the respondent access. She, however, has no choice. She would have demonstrated her goodwill by appearing in Court and seeking a review of the Order.

20. That said, in my ruling of 14th November 2025, I outlined the reasons why I did not consider it in the best interests of the Child to order the Child's return to Kenya pending the determination of the Appeal. Those reasons remain valid.

21. As stated in the ruling, if I were to grant the prayers at the interlocutory stage, they would likely embarrass the appeal, and secondly, in the event the appeal does not succeed, it would mean the child is forced to take two long-haul trips.

22. I do not in any way condone the conduct of the respondent; the issue before me is the non-compliance with Court orders by the respondent. I will make the following orders to remedy that-

a. The respondent will facilitate the access of the minor to the respondent two times a week on Mondays and Fridays at 7 pm EAT (start time of Call), and 8 pm EAT (end of call). Effective 13<sup>th</sup> March 2026.



- b. Counsels for the parties (or their representatives) will join the call for the 1st 5 minutes after the call begins and the last 5 minutes before the Call ends.
- c. The appellant shall circulate the link that will facilitate the call
- d. The appellant will prepare the record of appeal within 60 days.
- e. Mention before the Deputy Registrar on 30<sup>th</sup> April 2026 to confirm that the Record of Appeal is filed and to take directions on its hearing
- f. Since the respondent's conduct has occasioned this application, she will pay costs assessed at Kshs 50000 within 45 days.
- g. Leave to appeal is granted, any party exercising their right of appeal to do so within 30 days.

**SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 13<sup>TH</sup> DAY OF MARCH 2026**

**P. M NYAUNDI**

**JUDGE**

In the Presence of

Ng'alamoi Court Assistant

Ms. Mbugua for Appellant

Mr. Kibet for Respondent

