



REPUBLIC OF KENYA



KENYA LAW
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DAA v JPO (Petition E001 of 2025) [2025] KEHC 7156 (KLR) (28 May 2025) (Ruling)

Neutral citation: [2025] KEHC 7156 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA**

PETITION E001 OF 2025

WM MUSYOKA, J

MAY 28, 2025

BETWEEN

DAA PETITIONER

AND

JPO RESPONDENT

RULING

1. When this matter was placed before me, under Certificate of Urgency, on 13th May 2025, I directed that it be served, and, as a preliminary issue, I be addressed on why the matter was filed at the High Court rather than at the Chief Magistrate's Court, where the Children Court is domiciled, as it appeared to turn on an issue of parental responsibility.
2. The application, dated 13th May 2025, was served. It came up for inter partes hearing on 21st May 2025. Only the Advocate for the Petitioner addressed me. She explained that the matter was initially filed at Malaba Law Courts, as Children's Case No. E003 of 2024, but the court indicated that it had no jurisdiction on paternity, on the basis that that was an issue for the High Court. The suit was struck out on that account.
3. Article 165 (3) (a) of *the Constitution* of Kenya, 2010, and Section 76 of the *Children Act*, Cap 141, Laws of Kenya, were cited.
4. Section 32 of the *Children Act* provides for the sharing of parental responsibility equally between the parents of the child. However, the Act is silent on what steps are to be taken, where one of the parents denies parental responsibility and raises the issue of paternity.
5. The rights and best interests of the child are delineated in Part II of the *Children Act*. the rights listed, which could touch on paternity, relate to name and nationality at Section 5, non-discrimination at Section 9, parental care at Section 11, to inheritance at Section 17, among others.



6. Section 29 of the *Children Act* allows any person to institute court proceedings to claim any right or fundamental freedom of the child protected under Part II of the *Children Act* has been denied, violated, infringed or is threatened. Enforcement of the rights of children, protected under the *Children Act*, is through the High Court, by virtue of Section 29(3) of the *Children Act*, and, it would appear, applications founded on Section 29 (1) of the *Children Act* are to be filed at the High Court, and disposed of in the manner contemplated under Section 29 (3) of the Act.
7. Case law points to the High Court handling disputes on paternity, in children's matters in such cases as ANM vs. FPA (suing as the father and next friend of the minor) [2021] eKLR Odunga, J), DB vs. JK [2024] KEHC 12796 (KLR) (Ominde, J), FKW (suing as the mother and next friend of GDW (minor) vs. DMM [2015] eKLR (Ngaah, J), MW vs. KC [2005] KEHC 3172 (KLR) (GBM Kariuki, J), MKK vs. LGI [2021] eKLR (PJO, Otieno J) and PC vs. JMZ [2020] eKLR (Nyakundi, J).
8. I am satisfied that the High Court does have jurisdiction in the matter. In that behalf, let the Motion, dated 7th May 2025, be canvassed by way of written submissions, to be filed and exchanged in seven days. I shall mention the matter on 10th June 2025 to receive the submissions and allocate a date for ruling. Let the respondent be served with these directions, and a mention notice for 10th June 2025.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA ON THIS 28TH DAY OF MAY 2025.

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Ms. Gladys Muinde, instructed by Kinoti Kimathi & Company, Advocates for the petitioner.

