



AAD & another v NMC Fertility (K) Limited & 3 others (Civil Case E025 of 2025) [2026] KEHC 299 (KLR) (Civ) (22 January 2026) (Ruling)

Neutral citation: [2026] KEHC 299 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
CIVIL CASE E025 OF 2025
HK CHEMITEI, J
JANUARY 22, 2026**

BETWEEN

AAD 1ST APPLICANT

ANA 2ND APPLICANT

AND

NMC FERTILITY (K) LIMITED 1ST RESPONDENT

LOTUS FERTILITY AGENCIES 2ND RESPONDENT

COPTIC HOSPITAL 3RD RESPONDENT

GPO 4TH RESPONDENT

RULING

1. In their application dated 9th May 2025 the Applicants are seeking the following orders:-
 - (a) Pending the hearing and determination of this application and the suit an order is hereby issued compelling the first and second Defendants to disclose the identities and contact information of all mothers or patients who underwent intro fertilization (IVF) at their facilities in the year 2024 and of all the children estimated to be born in December 2024 to February 2025 for purposes of tracking and identifying the biological parents of the Plaintiffs and placed child.
 - (b) Pending the hearing and determination of the suit an order is hereby issued compelling the 3rd Defendant to produce and furnish the Plaintiffs with all the copies of the documentations, logs records and communication relating with the birth, admissions and discharge of the minor born on 19th January 2025 to the 4th Defendant the gestational surrogate and placed in the care of the Plaintiffs who are the biological parents.



- (c) Pending the hearing and determination of the suit an order be issued compelling the 3rd Defendant to produce and furnish the Plaintiff with copies and records and logs and communication relating to the birth, admission and discharge of all the minors born on 19th January 2025 and within 7 days after 19th January 2025 to allow clinical audit of their biological identities and tracing of biological parentage.
 - (d) Pending the hearing and determination of this suit an order be issued directing the 1st, 2nd and 4th Defendants to facilitate and fully cooperate in any DNA process sanctioned by the court in the identification and tracing of the child's genetic parentage and at their costs.
 - (e) Pending the hearing and determination of this application and the suit an order is issued barring the Defendants from tampering with or altering the records, deleting or in any other negative way the administrative records touching on the birth and placement of the minor.
 - (f) Costs be provided for.
2. The application is based on the grounds thereof and the sworn affidavit of the 2nd Applicant dated the same date.
 3. When the matter came up for hearing the Applicant's counsel requested the court to have the matter heard ex-parte for the reasons that there was a possibility that the Respondents might tamper with the records adversely should they be served.
 4. I have perused the supporting affidavit as well as the plaint filed earlier on before the Civil Division of this court.
 5. The Applicant deponed that she sought to have a baby through what is known as IVF process and by way of surrogacy.
 6. The process was undertaken at the 1st and 2nd Respondents' facility and the 4th Respondent was the surrogate mother.
 7. The baby was born at the 3rd Respondent hospital who apparently after a DNA analysis was not found to belong to the Applicants. This therefore triggered the suit herein as well as the application.
 8. I have read the affidavit in support and it is, in my considered view, that the prayers sought in the application are far reaching and consequential not only to the Respondents but other third parties whose privacy might be intruded without their permission. Of course, this will have legal ramifications.
 9. Nonetheless there is need to preserve the records of the entire medical processes from the beginning to the end. The ball squarely shall be in the Respondent's court. They are the holders of all the medical records and logs and any other paper trail in respect to the said IVF exercise. It is incumbent upon them jointly and severally to guard the same and or preserve till further orders of this court.
 10. At the same time there is no harm in the said Respondent's releasing to the applicant's all the records and documentations related specifically to them, the minor as well as the 4th Respondent. This is their constitutional right as they are parties in the matter.
 11. The request made involving other third parties as stated above shall await the responses from the respondent's and shall be decided after hearing them.
 12. In the premises I make the following orders:



- (a) The Respondents jointly and severally are hereby directed to preserve all the records, logs and any other material used to conduct the IVF procedure between April 2024 or thereabouts until 19th January 2025 or thereabouts when the child was born.
- (b) The Respondents shall within seven days from the date hereof release to the Applicants all the records relating to the said IVF exercise from April 2024 or thereabouts to 19th January 2025 in so far as it relates to the minor, the Applicant's and the 4th Respondent.
- (c) The parties henceforth shall use initials when describing the parties herein as much as it is possible for purposes of these proceedings.
- (d) The Respondents to be served with all the pleadings forthwith.
- (e) Costs shall await the outcome of the suit.

DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 22ND DAY OF JANUARY 2026.

H K CHEMITEI

JUDGE

