



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**FAMILY DIVISION**  
**MISC. CAUSE NO. 66 OF 2017**  
**IN THE MATTER OF THE CONTRAVENTION OF FUNDAMENTAL RIGHTS**  
**AND FREEDOMS AS ENSHRINED UNDER ARTICLES 27(1), 28, 32, 44, 45 AND**  
**53(1) (A) OF THE CONSTITUTION OF KENYA, 2010**  
**BETWEEN**  
**JGW.....APPLICANT**  
**AND**  
**PGM.....RESPONDENT**  
**RULING**

1. In the petition dated 17<sup>th</sup> August 2017 the petitioner JGW sought the following orders:-

“(a) That a Deoxyribonucleic Acid Test (D.N.A. Test) be carried out on the respondent and the petitioner so as to ascertain whether or not the respondent is the biological father of the petitioner;

(b) A declaration that the respondent is the petitioner’s biological father;

(c) There be a declaration that the petitioner’s fundamental rights and freedoms as enshrined under articles 27(1), 28, 32, 44, 45 and 53(1)(a) of the Constitution of Kenya, 2010, have been contravened and infringed upon by the respondent by his refusal to formally recognize the petitioner as his biological son and his paternity thereof and the failure to avail to the petitioner information he requested or release all necessary documents and affirmations necessary to formalize the registration of the respondent as the petitioner’s father;

(d) A compulsory order compelling the respondent to release all documents including his National Identity Card and Certificate of Birth as shall be necessary to effect the formal registration of his paternity;

(e) An order compelling the Registrar of Births and Deaths to amend the petitioner’s register of births to indicate that the respondent is the father to the petitioner;

(f) Any other orders and direction as this Honourable Court may consider appropriate; and

(g) costs of this petition.

2. This petition was not defended, and therefore the evidence of the petitioner and his mother JWM was not controverted. Each swore an affidavit to support the petition.

3. Their evidence was that in 1980 J and the respondent PGM were students at [particulars withheld] Secondary School in Lower Kabete. They were in form 2 and 4, respectively. They developed a relationship which resulted in a pregnancy. On 28<sup>th</sup> August 1981 their child was

born. He is the petitioner. As is required under Kikuyu customary law, J's family visited the respondent's family. The respondent acknowledged that he was the petitioner's father. The respondent continued with his education. He joined the National Youth Service in 1984. He was still visiting J. He, however, married another woman and stopped visiting her, or being in touch. She brought up the petitioner alone. The petitioner kept insisting that he wanted to know and meet his father. In 2003 she took him to meet his father, and his grandfather. In 2013 the grandfather died.

4. This petition has been brought to force the respondent to undertake a D.N.A. test to establish that he is the petitioner's father. The petitioner wants a declaration that the respondent is his father, so that his birth certificate reflects this paternity. He claims that his fundamental rights and freedoms under **Articles 27(1), 28, 32, 44, 45 and 53(1)(a)** of the Constitution have been infringed by the respondent's refusal to acknowledge him as his son.

5. I acknowledge that the petitioner's advocate Mr. Mbogo filed written submissions. I have considered them.

6. On the evidence above, the petitioner has established his biological relationship with the respondent. He has shown that his mother (J) and the respondent had a close relationship that resulted into his being born (**R.M.K. -v- A.K.G. & Another [2013]eKLR**). Considering the petitioner's right to know the truth about his paternity, and while acknowledging the scientific accuracy that is associated with what is being sought, I order that a DNA process be conducted on the respondent and the petitioner to ascertain whether or not the respondent is the petitioner's biological father.

7. In reaching this decision, I appreciate the petitioner's right to recognition, identity and dignity. I also appreciate that a DNA process will entail the extraction of tissue from the body of the respondent. This in itself will be a serious intrusive procedure and an attack on the respondent's right to privacy. However, I find that the particular facts of this case call for this intrusion on that privacy.

8. The DNA shall be conducted by the Government Chemist within 60 days from today, and at the petitioner's expenses. The expenses may be recovered depending on which way the petition will ultimately go. The Government Chemist shall do a report to the court immediately the results are known.

9. The rest of the petitioner's prayers will be adjourned and await decision, depending on which way the DNA results will be.

10. The petition shall be mentioned on **1<sup>st</sup> July 2021** for further orders.

**DATED AND DELIVERED ELECTRONICALLY AT NAIROBI THIS 22ND APRIL 2021.**

**A.O. MUCHELULE**

**JUDGE**