



**MMK & another v Registrar of Births & Deaths & 2 others (Miscellaneous Application E027 of 2024) [2025] KEHC 1904 (KLR) (Family) (6 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1904 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**FAMILY**

**MISCELLANEOUS APPLICATION E027 OF 2024**

**SN RIECHI, J**

**FEBRUARY 6, 2025**

**IN THE MATTER OF REMOVAL OF PARTICULARS IN THE BIRTH**

**IN THE MATTER OF AN APPLICATION BY:**

**BETWEEN**

**MMK ..... 1<sup>ST</sup> APPLICANT**

**MWK ..... 2<sup>ND</sup> APPLICANT**

**AND**

**THE REGISTRAR OF BIRTHS & DEATHS ..... 1<sup>ST</sup> RESPONDENT**

**DEPARTMENT OF CIVIL REGISTRATION ..... 2<sup>ND</sup> RESPONDENT**

**THE HONOURABLE ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

1. This matter relates to a child known as TW(Child). It was instituted by way of a Notice of Motion dated 13<sup>th</sup> January 2024 filed by two applicants MMK and MWK . It is anchored on Article 53 of [the Constitution](#) of Kenya 2010; Section 3A of the [Civil Procedure Act](#) Chapter 21 Laws of Kenya;; Section 12 of the [Births and Deaths Registration Act](#), Chapter 149 of the Laws of Kenya and all other enabling provisions of the law. The Application seeks the following orders:

1. That the honourable court be pleased to direct the 1<sup>st</sup> and 2<sup>nd</sup> respondents to remove,delete and/or strike out the name of the 1<sup>st</sup> Applicant from the Birth Certificate of the child.
2. That this Honourable Court be pleased to direct the 1<sup>st</sup> and 2<sup>nd</sup> respondents to issue the child with another Birth Certificate which does not bear the name of the 1<sup>st</sup> Applicant.



3. That the costs of this application be provided for.
2. The application is premised on the grounds that the applicant is the biological mother of the child. That the 1<sup>st</sup> applicant is not the biological father of the said child which fact has been confirmed by the mother, the 2<sup>nd</sup> applicant herein, as well as a paternity test which practically proved that the 1<sup>st</sup> applicant is not the father.
3. The application is further supported by an affidavit of the 1<sup>st</sup> applicant MMK sworn on 13<sup>th</sup> January, 2024. The 1<sup>st</sup> applicant briefly stated he had a relationship with the 2<sup>nd</sup> applicant MWK from 2021 to 2022.
4. The 1<sup>st</sup> applicant averred that he currently lives in Switzerland and the 2<sup>nd</sup> applicant in Kenya, and they were in a long-distance relationship and they only used to meet when he visited Kenya 1-2 times in a year.
5. The 1<sup>st</sup> applicant averred that he recalls that around August 2022, the 2<sup>nd</sup> Applicant informed him that she was pregnant and that he was the father to her unborn child. The 1<sup>st</sup> applicant stated that about a month later, after she had received the due date information from her doctor, it was clear that the child could not have been conceived when he was in the country being 1<sup>st</sup> July to 29 July 2022.
6. The 1<sup>st</sup> applicant stated that when he asked the 2<sup>nd</sup> Applicant about it, she agreed and confirmed he was not the father and when he visited Kenya, in December 2022, they met and mutually ended the relationship.
7. The 1<sup>st</sup> applicant averred that in September 2023, the 2<sup>nd</sup> Applicant informed him that his name was on the Birth Certificate and he was not the father. The 2<sup>nd</sup> applicant shared with him a copy of the Certificate of Birth which indicated that he was the father. In support the 1<sup>st</sup> applicant attached a copy of the birth certificate and marked as "MMKI".
8. The 1<sup>st</sup> Applicant averred that he did a paternity test in December, 2023 that showed that indeed, he is not the father to one TW. In support he annexed and marked as "MMK2" a copy of the Personal Paternity Test Certificate dated 2<sup>nd</sup> January, 2024.
9. The 1<sup>st</sup> applicant averred that he visited the offices of the Registrar Of Births And Deaths to have the misleading information corrected but he was advised that he needed a court order to have the same done and hence this application.
10. In response to the application, 2<sup>nd</sup> applicant filed a supplementary affidavit in which she briefly stated that the father of her child is one DMK who denied paternity immediately she informed him. She stated that he did not extend any support to her during the pregnancy. She has not had any communication with him since the birth of the child and his whereabouts is unknown.
11. This application was heard by way of viva voce evidence and the 1<sup>st</sup> applicant MMK testified as follows:

“I know MWK . She is a former girlfriend. I know TW. MWK is the biological mother. When the child was born my name was put in the certificate as the father. I was suspicious that I was not the biological father. We requested for DNA and received a report dated 2.1.2024. It showed I was not the father. I request the court to direct the Registrar to remove my name from the certificate. That is all.”



12. The 2<sup>nd</sup> applicant MWK testified as follows;

“I am the applicant. I am the biological mother of TW. She was born on 1.2.2023. She is one year 5 Months. She was born in Jacaranda Maternity Hospital. When she was born I included the father as MMK . It was so registered in the birth certificate. MMK is not the biological father of the child. I have filed a supplementary affidavit. I have disclosed the biological father of the minor is DMK . I wish the court to rely on the supplementary affidavit.”

13. I have analyzed the Application and the Response filed herein. The case for the Applicants is understood easily as one seeking to have the name of the 1<sup>st</sup> Applicant removed or deleted from the Birth Certificate in respect of Baby TW. The 2<sup>nd</sup> Applicant who is the biological mother of the child confirmed to this court through evidence that the 1<sup>st</sup> applicant is not the father of the child. The 2<sup>nd</sup> applicant stated that after giving birth she indicated the name of the father as Michael Kioy but he is not the biological father of the child. The 2<sup>nd</sup> applicant disclosed the biological father of the child as DMK .

14. This issue is conceded to by both Applicants and both are desirous to have the name of the 1<sup>st</sup> Applicant removed or deleted from the Birth Certificate. The law guards the rights of a child because children are vulnerable members of our society and although they have parents, it is paramount that the law lends its hand in protecting them to ensure that they can enjoy the rights granted to them by the law.

15. Article 53 (1) (a) of *the Constitution* of Kenya 2010 provides that every child has the right to a name and nationality from birth; and under Article 53 (2), a child’s best interests are of paramount importance in every matter concerning the child.

16. This legal requirement to give paramourncy to the best interest of the child in all actions concerning the child is repeated in Section 8 of the Children’s Act,2022 which provides that:

(2) 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.

(3) All judicial and administrative institutions, and all persons acting in the name of these institutions, where they are exercising any powers conferred by this Act shall treat the interests of the child as the first and paramount consideration to the extent that this is consistent with adopting a course of action calculated to—

(a) safeguard and promote the rights and welfare of the child;

(b) conserve and promote the welfare of the child;

(c) secure for the child such guidance and correction as is necessary for the welfare of the child and in the public interest.

17. The same legal requirements are found under Article 4 of the African Charter on the Rights and Welfare of the Child and Article 3 of the United Nations Convention on the Rights of the Child. What are the best interests of the child? To answer this question it is my view that the best interests of the child includes but is not limited to the following:

a. Right to a name.

b. Right to nationality.

c. Right to identity.



- d. Right to parental care.
  - e. Peaceful and comfortable environment.
  - f. Protection from harm and harmful practices.
  - g. Right to food and shelter.
  - h. Right to religion or cultural considerations.
  - i. Acceptance by family and community.
  - j. To be loved
  - k. Recreation
  - l. Education and proper guidance, etc.
18. When a child is born, either one or both of the parents are present. It is the two parents or the one parent or any other person acting on behalf of the parent(s) who are obligated by the law to notify the authorities about the birth of that child. A person giving notification provides the registrar with the name of the child; date of birth; gender of the child; nature of birth (whether born alive or otherwise); place of birth and names of the parent or parents of the child. This information becomes useful later in obtaining the birth certificate of the child.
19. In this matter the information contained in the Birth Certificate serial number 967xxxx contains the names of the 1<sup>st</sup> Applicant as the father and the 2<sup>nd</sup> Applicant as the mother of baby TW. It is this fact that leads the Respondents to contend that the Applicants provided the information recorded on the register and that it is this information that was used to process the Birth Certificate and therefore in bringing this application.
20. I have noted that the Applicants are in agreement that removing or deleting the name of the 1<sup>st</sup> Applicant from the Birth Certificate is the best cause of action since the 1<sup>st</sup> Applicant is not the biological father of the child. I have noted that it is the desire of both Applicants to have the prayers they are seeking granted.
21. As the law dictates, it is not their interests this court is looking at in determining this matter. It is the best interest of the child that is of concern to this court. But I ask myself this question: Is it in the best interest of the child to impose the name of the 1<sup>st</sup> Applicant who is not the child's biological father and who is not willing to be named as a father to the child. The mother, the 2<sup>nd</sup> Applicant supports the 1<sup>st</sup> Applicant in seeking these orders. The DNA test results was conclusive evidence on paternity that tilted the balance in favour of the Applicants.
22. The subject child will grow and become aware of the circumstances surrounding his birth and the paternity issue. He deserves to know the truth. He has a right to know his biological father. He has a right to a father whether biological or foster. But that father must be willing to be a father to him for his normal and conducive upbringing. In my considered opinion I do not think that imposing the name of a man who is not the biological father of the child and who is not willing to play the role of a father of the child is in the best interest of the child.
23. I have considered the decision in *F K K & Another vs. Attorney General & 2 Others* [2015] where the court was dealing with similar circumstances like this one. F K K, the mother of the child in that case registered the birth of her child and gave the name of the 2<sup>nd</sup> Applicant K L M as the father believing this was the case. A DNA test results revealed that this was not the case. Both brought an application



to have the name of K L M deleted and removed as the father in the Birth Certificate of the child. The court allowed deletion of the name stating that it is in the best interest of the child. I am persuaded by that decision.

24. I have considered the facts of this matter, the relevant law and the cited authorities. In conclusion, I am satisfied that it would be in the best interest of the child to remove/delete the name of the 1<sup>st</sup> Applicant MMK from the Birth Certificate in respect to Baby TW . I therefore allow the Notice of Motion dated 13<sup>th</sup> January 2024 and grant the following orders against the Respondents:

1. That the 1<sup>st</sup> Applicant's name MMK be deleted and/or removed as the father of the Child herein from the Birth Certificate serial number 9676782 of the Child herein dated 10<sup>th</sup> February 2023 and obtained from Jacaranda Hospital.
2. That the 2<sup>nd</sup> Respondent be and is hereby ordered to remove and/or delete the 1<sup>st</sup> Applicant's name MMK as the father of the Child TW from the Birth Certificate which has since been processed and issued by the Civil Registry Department of Births and Deaths.
3. That the 1<sup>st</sup> Respondent be and is hereby ordered to remove and/or delete the 1<sup>st</sup> Applicant's name MMK from the Birth Certificate of the Child TW.
4. That each party to bear their own costs.

**DATED AT NAIROBI THIS 6<sup>TH</sup> DAY OF FEBRUARY 2025.**

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**S. N. RIECHI**

**JUDGE**

