



**In re Baby NWW (The Minor) (Miscellaneous Application E168 of 2024)
[2025] KEHC 3306 (KLR) (Family) (20 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3306 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MISCELLANEOUS APPLICATION E168 OF 2024
HK CHEMITEI, J
MARCH 20, 2025
IN THE MATTER OF BABY CURRENTLY KNOWN AS NWW
(THE MINOR)
AND
IN THE MATTER OF AN APPLICATION BY:**

BETWEEN

CKM APPLICANT

AND

SW 1ST RESPONDENT

REGISTRAR OF BIRTHS AND DEATHS 2ND RESPONDENT

ATTORNEY GENERAL 3RD RESPONDENT

RULING

1. This ruling relates to the notice of motion (hereinafter, “application”) dated 14th August, 2024 filed by the Applicant, CKM seeking for Orders That:
 - (a) Spent;
 - (b) This Honourable Court be pleased to issue an Order of Declaration that the Respondent has violated the Minor’s right to a name and identity by unilaterally naming the Minor NWW;
 - (c) This Honourable Court be pleased to issue an Order of Declaration that the Respondent has violated the Applicant’s right and responsibility to actively participate in the naming of the Minor and to determine the name of the Minor jointly with the Respondent;



- (d) This Honourable Court be pleased to issue an Order of Declaration that the Applicant has a right and responsibility to actively participate in the naming of the Minor and to determine the name of the Minor in collaboration with the 1st Respondent;
 - (e) This Honourable Court be pleased to issue a temporary Order of injunction restraining the 1st Respondent from commencing and/or continuing with the registration of the birth of the Minor as NWW pending the hearing and determination of this Application;
 - (f) This Honourable Court be pleased to issue a temporary Order of Injunction restraining the 1st Respondent from referring to the Minor as NWW pending the hearing and determination of this Application;
 - (g) This Honourable Court be pleased to issue an Order restraining the Respondents from commencing and/or continuing with the registration of the birth of the Minor pending the hearing and determination of this Application.
 - (h) This Honourable Court be pleased to issue an Order compelling the Applicant and the 1st Respondent to jointly determine the name of the Minor within 30 days from the issuance of the order, and;
 - (i) Upon implementation of Order (h) above, this Honourable Court be pleased to issue an Order compelling the 2nd and 3rd Respondents to effect changes to the Minor's Certificate of Birth by deleting the name NWW and inserting such other name as agreed by the Applicant and 1st Respondent jointly.
2. The application is supported by affidavit sworn by CKM on 14th August, 2024. He avers inter alia that he and the 1st Respondent married on 28th December, 2012 and they have 5 children together. He is the biological father of the minor in the instant proceedings. The 1st Respondent has refused to involve him in the naming of the minor and has unilaterally named the minor NWW as opposed to NBK as per his proposal. K is the surname that all their other children use. He catered for all the medical bills related to the minor's birth at [Particulars Withheld] hospital on 9th April, 2024. He is apprehensive that the minor's birth certificate will be processed without his, K, as her biological father.
3. The application is unopposed and there are no written submissions filed by both parties.

Analysis And Determination:

4. I have carefully considered the application and address it as follows:
5. In the case of *Katiba Institute v Attorney General & 9 others* [2021] KESC 25 (KLR) the court stated as follows:
- “18. Upon noting this court's pronouncement in the decision of *Gideon Konchellah v Julius Lekakeny Ole Sunkuli & 2 others* [2018] eKLR where the Court expressed that: “[10] Be that as it may, as a court of Law, we have a duty in principle to look at what the application is about and what it seeks. It is not automatic that for any unopposed application, the Court will as a matter of course grant the sought orders. It behooves the Court to be satisfied that *prima facie*, with no objection, the application is meritorious and the prayers may be granted. The Court is under a duty to look at the application and



without making any inferences on facts point out any points of law, such as any jurisdictional impediment, which might render the application a non-starter.”

6. In *NTA v SVK & 2 others* [2020] eKLR, the court stated as follows, “...11. I have considered the petition. The Respondent does not deny the petition or that he is not the biological father of the minor. The DNA Tests also shows that the Petitioner is the father of the minor. So, to the extent that the Petitioner seeks rectification of births register, that prayer is granted.”
7. In *E W G v J M N & another* [2017] eKLR, the court stated, “... On the other hand a child born of married parents had the right to have the name of the married father entered into the register without the Registrar obtaining any evidence of consent from the father or mother.... How important is the Petitioners claim to a right to identity? In my view it is very important for her social, physical (health) and psychological well being. This right to know ones parentage which courts have severally asserted in respect to minors, does not come suddenly come to a screeching halt once one becomes an adult. Psychologists have severally asserted that a human being requires a full knowledge of their true identity in order to function as useful and well adjusted members of society . It is only through DNA testing that any lingering doubts may be removed and the Petitioners paternity can be proved with a certainty. The right of one to know ones parentage does not in my view diminish once one reaches the age of majority. Form the circumstances in this particular case I am satisfied that the Petitioner has established a prima facie case. This is one situation where the Petitioners right to identity outweighs the 1st Respondent rights. In order to establish the truth and in order to determine once and for all the issue of Paternity between the parties, a DNA test is necessary...”
8. In light of the foregoing, it is not in dispute that the Applicant and the Respondent are married and it is also not in dispute that the Applicant is the minor’s biological father.
9. The issue of names and naming is a right generally bestowed upon the parents. It is a right which cannot be derogated or transferred to any third party unless otherwise shown.
10. The 1st Respondent though the biological mother cannot unilaterally take the initiative of naming the minor without the consent of the father. That act can as found above have some psychological impact on the minor now or in future.
11. For posterity purposes it is understood that within the African culture unless it is shown to be repugnant the names and the naming responsibility solely lies with the parents and the same ought to be respected.
12. In the premises I find the application merited and direct that:-
 - (a) The Respondents jointly and severally violated the minor’s rights by naming her NWW without the applicant’s involvement.
 - (b) Both the Applicant and the 1st Respondent have the rights and responsibility of naming the said minor.
 - (c) The applicant and the 1st Respondent within 30 days from the date herein shall agree on the names to be given to the minor and in default the Applicant be at liberty to give her the names he desires.
 - (d) The 2nd Respondent once order (c) above is complied shall effect the changes in the Register of Births and Deaths within 30 days thereafter.
 - (e) Costs shall be in the cause.



DATED SIGNED AND DELIVERED VIA VIDEO LINK THIS 20TH DAY OF MARCH 2025.

H K CHEMITEI

JUDGE

