



**JMM v CMM & another (Miscellaneous Application
E334 of 2024) [2025] KEHC 4287 (KLR) (2 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4287 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
MISCELLANEOUS APPLICATION E334 OF 2024**

RC RUTTO, J

APRIL 2, 2025

BETWEEN

JMM APPLICANT

AND

CMM 1ST RESPONDENT

REGISTRAR OF BIRTHS AND DEATHS DEPARTMENT OF CIVIL

REGISTRATION MACHAKOS 2ND RESPONDENT

RULING

1. Before this Court for determination is the Applicant's Chamber Summons Application dated 4th December 2024 seeking: -
 - a. Spent
 - b. That the 2nd respondent be ordered to delete and or remove the applicant's name as the father from the birth certificates of the minors PMM and SMM both issued on 18.01.2024 by the Civil registry Department of Births and Deaths in Machakos.
 - c. That the 2nd respondent be ordered to delete and or remove the applicant's name Mulei and or M from the 1st respondent's National ID card and the minors PMM and SMM Certificates of Birth.
2. The application is supported by the supporting affidavit dated 4th December 2024 sworn by the applicant JMM where it was deposed that he met the 1st respondent in the year 2013, they began cohabiting and he later visited her parents but did not pay the dowry as they did not agree on the amount.
3. That he agreed out of love for the 1st respondent to include his name in her national identity card resulting to change of her name to CMM having adopted his name M and similarly consented to his



name being entered in the birth certificates of her two children who she had sired with other men. Consequently, their names were changed to PMM and SMM, respectively.

4. It was also averred that the relationship took a dramatic turn when the 1st respondent became violent towards his daughter that he had sired in his previous marriage and upon confronting her, the 1st respondent became abusive and physically attacked the applicant forcing him to flee.
5. The applicant contented that upon returning home, he found that the 1st respondent had fled with her kids and the attempts to resolve the dispute through her parents proved futile since the 1st respondent actively sabotaged his attempt to move on despite their separation.
6. It was averred that the 1st respondent threatens any woman that the applicant tries to move on with on the ground that they were still legally married and had sired two children by the fact that they bear the applicant's name in the national identity card and birth certificate respectively.
7. The applicant prayed that his name be deleted and or removed from the 1st respondent's ID card and her children's birth certificates to enable him move on with his life peacefully.
8. The respondents did not file any response to the application as at the time of writing this ruling, despite the directions on service and on filing responses.

Analysis and Determination

9. I have carefully considered the present application, the affidavit in support and the only issue for determination is: -

Whether this application is merited?

10. The Applicant is seeking to have his name removed from the birth certificate of the minors as well as from the National Identification Card of the 1st respondent. The Children's biological mother, the 1st respondent, did not respond to the application. It is his position that he neither formally married the 1st respondent nor sired the children in question.
11. However, before delving into the issue, this Court notes that, just like the 1st respondent, the 2nd respondent did not file their respective pleadings and submissions to the application. When the application came up for hearing the applicant's counsel informed court that despite service both respondents had not filed any response and thus the application should be considered unopposed and the orders sought should be allowed as prayed.
12. This court has a duty to uphold the rule of law at all times and ensure that justice is administered without bias or fear. It must also review the pleadings in its entirety, evaluate all facts and measure them against the applicable law before issuing any orders or directions. Guided by this, I have reviewed the affidavit of service filed by Kyalo Makau an authorized process sworn on 19th December 2024. In the affidavit the process server confirms personally serving the 1st respondent. However, there is no mention of service upon the 2nd respondent, namely the Registrar of Births and Deaths Department of Civil Registration Machakos. Further no additional affidavit of service was filed to indicate that the 2nd respondent was never served with the pleading in this matter.
13. Service of an application is an integral part of any legal proceedings that cannot be overlooked. Proceedings under such circumstances would amount to condemning a party without according them an opportunity to be heard, despite the fact that the orders being sought if granted would be enforced by them.



14. This court also notes that the applicant has moved the court under Article 35(2) of the *Constitution*; section 12 and 28 of the *Births and Death Registration Act* (the Act). Article 35 of the Constitution guarantees every person the right to the correction or deletion of untrue or misleading information that affects that person.
15. Section 12 provides for entry of father in register it states;

“No person shall be entered in the register as the father of any child except either at the joint request of the father and mother or upon the production to the registrar of such evidence as he may require that the father and mother were married according to law or, in accordance with some recognized custom
16. Section 28 provides for correction of errors in registers as follows;

“(1) The Principal Registrar may, subject to the rules, and on payment of the prescribed fee (which he may in his discretion in any particular case remit), correct any error or omission in any register or index

(2) Corrections shall be made without erasing the original entry, and shall be authenticated by the signature of the Principal Registrar.”
17. In the instant case, the Applicant by his own admission confirms that he agreed to have his name included in the 1st respondent’s identity card and Birth Certificate of the minors which resulted to them using the name M. He now seeks this court to order that his name be deleted from the 1st respondent’s identity card and Birth Certificate of the minors.
18. The applicant has invoked sections 12 and 28 of the *Act*. These provisions do not give this court the mandate to issue the prayers sought. The mandate to undertake corrections under section 28 is bestowed upon the 2nd respondent. As such by granting the orders this court will be usurping the mandate of the 2nd respondent who despite being mentioned as a party was not served with the pleadings.
19. Furthermore, the applicant has not demonstrated any effort or attempt to engage the registrar in implementing the requested orders. Moving the court before first seeking an administrative intervention from the 2nd respondent constitutes an abuse of the court process. The applicant was required to first exhaust the administrative internal processes provided for by the 2nd respondent before approaching the court. By bypassing these steps, the applicant is attempting to circumvent due process, an act that amounts to an abuse of the court process and will not be condoned. Needless to add, it is established that any proceedings against the Government should be instituted in the name of the Attorney General, as the legal advisor and / or representative on behalf of the Government and its entities in civil proceedings such as this.
20. Consequently, this application lacks merit and the same is dismissed. As none of the respondents participated in the proceedings relating to this application, there shall be no orders as to costs.

DATED AND DELIVERED AT MACHAKOS THIS 2ND DAY OF APRIL 2025.

RHODA RUTTO

JUDGE

In the presence of;



Kilonzi for Applicant
Sam Court Assistant

