



**MAW v TM & 2 others (Miscellaneous Application E282 of 2024)
[2025] KEHC 9661 (KLR) (Family) (4 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9661 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MISCELLANEOUS APPLICATION E282 OF 2024**

**H NAMISI, J
JULY 4, 2025**

BETWEEN

MAW APPLICANT

AND

TM 1ST RESPONDENT

THE ATTORNEY GENERAL 2ND RESPONDENT

**REGISTRAR OF BIRTHS AND DEATHS DEPARTMENT OF CIVIL
REGISTRATION 3RD RESPONDENT**

RULING

1. Before the Court is Notice of Motion dated 19 November 2024 seeking the following orders:
 - i. The Honourable Court be pleased to order that the name of the 1st Respondent be struck out/ deleted from birth certificate No 6XXXX belonging to TM, a minor;
 - ii. The Honourable Court be pleased to order the 2nd and 3rd Respondents to recall the Birth Certificate No 6XXXX in the name of TM and instead reissue a NEW Birth Certificate to the minor in the name of THM, as per the provisions of Section 28 (1) and (2) of the [Births and Deaths Registration Act](#);
 - iii. There be no orders as to costs.
2. The Application is supported by Affidavit sworn by the Applicant, the biological mother of the minor herein. The minor was born on 15 September 2016. When her Certificate of Birth was issued, the same bore the names of the Applicant and 1st Respondent as her mother and father, respectively. A DNA test conducted later one revealed that the 1st Respondent is not the biological father of the minor. The



- Applicant now wishes to have the name of the 1st Respondent removed from the minor's Certificate of Birth, as well as have the minor's name changed from T.M to T.H.M.
3. Attached to the Supporting Affidavit are copies of the DNA results dated 11 May 2023 as well as a consent signed by the Applicant and 1st Respondent for the removal of the 1st Respondent's name from the Certificate of Birth.
 4. Despite being served, the 2nd and 3rd Respondents did not participate in these proceedings. Further, the 1st Respondent did not enter appearance nor file any response.
 5. The Applicant filed submissions in support of the Application. The Applicant relied on the provisions of Article 35 (2) and Article 53 (2) of the Constitution, which provide as follows:

“ 35 (2) - “Every person has the right to the correction or deletion of untrue or misleading information that affects the person.”;

53 (2) – “A child's best interest are of paramount importance in every matter concerning the child.”
 6. The Applicant further relied on the cases of PNO & another v Registrar of Birth and Death & 2 others (Miscellaneous Application 179 of 2023) [2023] KEHC 23502 (KLR) and MMK & another v Registrar of Births & Deaths & 2 others (Miscellaneous Application E027 of 2024) [2025] KEHC 1904 (KLR) (Family).
 7. Section 12 of the Births and Deaths Registration Act, Cap 149 Laws of Kenya provides as follows:

“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.”
 8. Section 7 of the Children Act provides as follows:
 - (1) Every child shall have a right to a name and nationality and, as far as possible, the right to know and be cared for by their parents.
 - (2) Every child has the right to be registered in the Register of Births immediately after birth in accordance with the Births and Deaths Registration Act (Cap. 149).
 9. Pursuant to the provisions of section 8 of the Children Act, this Court must act in the best interests of the minor herein. It is in the best interest of the minor to have a name and an identity, which identity is informed by knowing one's parents and heritage. In this instance, it would be detrimental for the child to base her identity on incorrect information with respect to her paternity, as is currently contained in the Certificate of Birth. For that reason, it is in the minor's best interests that the 2nd Respondent's name be deleted from the Certificate.
 10. In addition to the deletion, the Applicant prays for a change of name of the minor. In her Affidavit, the Applicant has provided no reasons for the said change of name.
 11. Concerning change of names, Section 14 of the Births and Deaths Registration Act provides as follows:

“Where the birth of any child has been registered before it has received a name, or where the name by which it was registered is altered, the parent or guardian of such child may within two years of the registration, on payment of the prescribed fee, and on providing



such evidence as the registrar may think necessary, register the name that has been given to the child."

12. Having been born in 2016, the minor herein is much older than 2 years. This means that the above provision is inapplicable in the circumstances. The proper procedure, therefore, would be by way of a Deed Poll.
13. In the circumstances, I partially allow the Application and make the following orders:
 - i. The Registrar of Births and Deaths and the Department of Civil Registration is hereby directed to delete, remove, strike out and /or correct from the Register and the minor's Certificate of Birth serial Number 669xxx3 the name of the 1st Applicant as her father;
 - ii. Upon such deletion, removal, striking out and/or correction of the Minor's Certificate of Birth serial number 669xxx3, the 3rd Respondent do reissue the minor with a Certificate of Birth which does not bear the name of the 1st Applicant or any other person as the father of the minor.
 - iii. Owing to the nature of the case, I make no orders as to costs.

DATED AND DELIVERED AT NAIROBI THIS 4 DAY OF JULY 2025

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

For Applicant: N/A

For 1st Respondent: N/A

For 2nd Respondent: N/A

For 3rd Respondent N/A

Court Assistant: Libertine Achieng

