



**MNM v Registrar of Births and Deaths Laikipia West District & another (Children Miscellaneous Application E006 of 2024) [2024] KEHC 9450 (KLR) (25 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9450 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAHURURU  
CHILDREN MISCELLANEOUS APPLICATION E006 OF 2024**

**AK NDUNG’U, J**

**JULY 25, 2024**

**IN THE MATTER OF THE CHILDREN ACT NO. 8 OF THE LAWS OF KENYA**

**AND**

**IN THE MATTER OF REMOVAL/RECTIFICATION OF PARTICULARS IN  
THE BIRTH CERTIFICATE OF WAYLEN THEURI MACHARIA (CHILD)**

**AND**

**IN THE MATTER OF REGISTRAR OF BIRTHS AND  
DEATHS DIRECTOR OF CIVIL REGISTRATION**

**BETWEEN**

**MNM ..... APPLICANT**

**AND**

**REGISTRAR OF BIRTHS AND DEATHS LAIKIPIA WEST  
DISTRICT ..... 1<sup>ST</sup> INTERESTED PARTY**

**DIRECTOR OF CIVIL REGISTRATION ..... 2<sup>ND</sup> INTERESTED PARTY**

**RULING**

1. *Vide* Originating Summons dated 29<sup>th</sup> April, 2024 the applicant seeks orders that;
  1. Spent.
  2. That the Registrar of births and deaths – Laikipia West District and the Director of Civil Registration be ordered to remove the name of PAT from the birth certificate of WTM and replace it with the name of JMT as the father.



3. That the Registrar of births and deaths – Laikipia West District and the Director of Civil Registration be ordered to issue birth certificate for WTM bearing the name of JMT as the father.
  4. That MNM be granted actual and legal custody of WTM .
  5. That MNM be authorized to travel with WTM to Sweden.
2. The application is supported by the affidavit of the Applicant and on the following grounds;
- a. That the Applicant is the biological mother of WTM who was born on 15/07/2022 at Oljabet Hospital in Nyahururu Town.
  - b. That the Applicant was previously married to PAT , a Swedish under the Swedish Laws but they divorced on 14<sup>th</sup> April, 2022.
  - c. That since the minor was born with 280 days after the dissolution of the marriage a presumption arose under Section 118 of the *Evidence Act* that PAT was the father of the child and his name was inserted in the minor’s birth certificate.
  - d. That PAT is not the biological father of the minor as indicated in the birth certificate.
  - e. That the biological father of the child is JMT a position confirmed through a DNA examination as per a report dated 4<sup>th</sup> October, 2023.
  - f. That PAT has in his letter dated 10<sup>th</sup> March, 2023 confirmed that he is not the father of WTM .
  - g. That the Applicant left Sweden to Kenya on 6<sup>th</sup> September, 2020 and she did not have any physical contact with PAT and there is no way the latter can be the minor’s biological father.
  - h. That the Applicant while intending to travel to Sweden with the minor wrote a letter to the Embassy of Sweden indicating that JMT was the biological father of the minor.
  - i. That in light of the foregoing, the Embassy of Sweden requires legal documents supporting that JMT is the biological father of the minor. This includes a birth certificate and a court order giving legal custody of the minor of the Applicant.
  - j. That as such, it is necessary and in the best interest of minor to rectify the birth certificate to include the proper particulars of his father and the orders of legal custody be granted to the Applicant.
  - k. That the biological father of the minor has consented for the minor to travel to Sweden with the mother.
  - l. That the Applicant has provided for all the needs of the child since birth to include but not limited to financial support, emotional, psychological, religious and social needs.
  - m. That it is thus in the best interest of the minor herein that the orders sought be granted.
3. The gist of the application is that the name of PAT (Tilander) who was hitherto married to the Applicant was inserted in the birth certificate of WTM (minor) on a legal presumption since the minor was born 280 days after the dissolution of the marriage between the applicant and the Respondent.
4. It is urged that upon a DNA test being conducted, Tilander was found not to be the father of the minor. The pathology lab report is exhibited and marked “MNM2”. On that basis, it is sought that the name of Tilander be removed from the birth certificate of the minor herein.



5. Whereas Tilander would have the right to have his name removed from the birth certificate of a minor who is not his biological child, this court cannot lose sight of the right of a child to a name and nationality and the paramount consideration in any matter affecting a child, which is, the best interest of the child. The constitution puts it thus;

Article 53 (1) (a) 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.

6. This court has to weigh the scales based on evidence before it and arrive at a decision that ultimately is in the best interest of the minor herein.

7. To my mind, the minor will in the fullness of time 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 and be certain of his nationality.

8. I am fortified in this finding by the persuasive decision in F K K & another v Attorney General & 2 Others [2015] where the court in similar circumstances like this one arrived at the same reasoning. In that case, F. K. K., the mother of the child 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.

9. Be thus as it may, the court's antanae has not failed to detect what is a clear red flag that draws its attention to the need to interrogate the set of facts herein deeper than as presented on the face of it.

10. To begin with, it is not clear how the Applicant bore a child with an African male named JMT on 15<sup>th</sup> July 2022 and proceeded to include the name of Ake Tilander as the father yet, in his purported letter marked "MNM3" annexed to the applicant's affidavit, the two had not met since 6<sup>th</sup> September 2020. What was the motive on the part of the applicant? Wasn't the Applicant's giving out the name of Tilander as the father fraudulent in the first place? Whereas a child born in wedlock would be presumed to be sired by the husband, the circumstances in this case would require further inquiry.

11. This becomes important since neither the now revealed 'biological' father nor the former husband to the Applicant has sworn an affidavit to ascertain the facts. The DNA results tendered are not certified and therefore the probative value is not only diminished but is reduced to zero. Further, a children officer's report would have been a suitable tool to verify the facts surrounding this matter. None was procured and/or presented.

12. I have emphasized above the principle of the best interest of the child. The case before me is one where a full inquiry on the circumstances surrounding the child herein must of necessity be laid bare for the court to be in a position to make a determination that would tilt in favour of the best interest of the child. This is important all the more when considering that the minor is supposed to be taken out of the country leaving the jurisdiction and supervision of the court. On the facts before me, am persuaded that the applicant falls short of proving her case

13. With the result that the Originating Summons dated 29th April 2024 fails and is dismissed. I make no orders as to costs.

**DATED SIGNED AND DELIVERED VIRTUALLY THIS 25<sup>TH</sup> DAY OF JULY, 2024**

.....



**A.K. NDUNG’U**  
**JUDGE**

