



**VKM v RTP & 4 others (Constitutional Petition E025 of 2022)
[2023] KEHC 18464 (KLR) (23 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 18464 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CONSTITUTIONAL PETITION E025 OF 2022**

OA SEWE, J

MAY 23, 2023

IN THE MATTER OF SZBK, A MINOR

AND

IN THE MATTER OF THE BEST INTEREST OF THE CHILD PRINCIPLE

AND

**IN THE MATTER OF ENFORCEMENT OF THE BILL OF RIGHTS UNDER ARTICLE
22(1) AND ARTICLE 23(1) & (3) OF THE CONSTITUTION OF KENYA, 2010**

AND

**IN THE MATTER OF BREACH OF FREEDOM FROM TORTURE AND CRUEL,
INHUMANE OR DEGRADING TREATMENT OR PUNISHMENT, FAILURE
TO COMPLY WITH THE BEST INTEREST OF THE CHILD PRINCIPLE,
INGRINGEMENT OF THE MINOR'S INHERENT RIGHT TO DIGNITY**

AND

**IN THE MATTER OF CONTRAVENTION OF RIGHTS AND
FUNDAMENTAL FREEDOMS UNDER ARTICLES 25(A), 28, 35(1)
& (2), 40, 43(1)(A), 53(1)(A), (D), (E) & (2) OF THE CONSTITUTION**

BETWEEN

VKM PETITIONER

AND

RTP 1ST RESPONDENT

ASVC 2ND RESPONDENT

PRINCIPAL REGISTRAR OF BIRTHS & DEATHS 3RD RESPONDENT

CABINET SECRETARY IN CHARGE OF EDUCATION 4TH RESPONDENT



JUDGMENT

1. The petitioner, VKM, filed this Petition on June 21, 2022 in his capacity as the biological father of the subject minor, SZBK. contending that the minor’s mother, who is also the 1st respondent herein, has, since her birth, violated her constitutional rights in numerous ways. He explained that he had an extra-marital affair with the 1st respondent, RTP, and the relationship led to the birth of the minor on 14th October 2018 at the Mombasa Hospital; and therefore that the 1st respondent has always had full custody of the minor. He further averred that pursuant to an application by the 1st respondent, the 3rd respondent issued the minor with a Certificate of Birth No. xxxx based on false and inaccurate information from the 1st respondent.
2. Thus, the petitioner complained that, in the Certificate of Birth, the name of the minor is not fully stated; and that his name, as the father, was completely omitted and the space marked XXXXXXXXXXXX. The Petitioner further averred that, although he has been exercising parental responsibility towards the minor since birth, it has not been without stonewalling from the respondents. In particular, the petitioner alleged that:
 - (a) The 1st respondent has not only obliterated the minor’s paternal identity, name and ancestry in the minor’s purported Certificate of Birth, but has also been denying the minor access to the petitioner; and the 1st respondent is in the process of having the petitioner declared a persona non grata in the minor’s school.
 - (b) The 2nd respondent, who runs the school in which the minor is a pre-primary pupil, is contemplating the obliteration of the petitioner’s name from the minor’s school records and consequently declare the petitioner persona non grata based on the 1st respondent’s vindictiveness and the minor’s purported fatherlessness in the impugned Certificate of Birth.
 - (c) The 3rd respondent, who issued the impugned Certificate of Birth, has no mechanisms and/or grievance procedure available to the minor, and/or accessible to the petitioner, for rectification of the false and inaccurate information contained in the Certificate of Birth.
 - (d) The 4th respondent as the regulator, has no mechanism or grievance procedure available to further the minor’s best interest as well as cushion the minor from the 2nd respondent’s harmful connivance with the 1st respondent.
 - (e) The 5th respondent, on the strength of the impugned Certificate of Birth, has denied the minor joiner as a beneficiary to the petitioner’s fully paid up NHIF account notwithstanding the minor’s eligibility and right to the same.
3. Accordingly, the petitioner prayed for the following reliefs pursuant to Articles 2(1) & (4), 24(5), 25(a) 28, 35(1) & (2), 40, 43(1)(a) and 53(2) of the Constitution:
 - (a) A declaration that the minor has a right to have her complete name, SZBK, in her Certificate of Birth.
 - (b) A declaration that the minor has a right to have the name of her father, VKM, in her Certificate of Birth as her father.



- (c) A declaration that the respondents have acted contrary to the best interest of the child principle under Article 53(2) of the Constitution.
 - (d) A declaration that the respondents have acted contrary to the rule of law principle under Article 10 of the Constitution.
 - (e) A declaration that the minor's rights under Articles 25(1), 28, 35(1) & (2), 40 and 43(1)(a) of the Constitution have been violated by the respondents.
 - (f) An order of certiorari to remove into this Court and cancel the Certificate of Birth No. xxxx or any other Certificate of Birth issued by the 3rd respondent that does not describe the minor by her full name.
 - (g) An order of mandamus compelling the 3rd respondent to issue the minor with a Certificate of Birth describing the minor by the minor's full name, SZBK, and replacing the entry of XXXXXXXXXXXX against the name and surname of the Father with the petitioner's name: VKM.
 - (h) An order of mandamus compelling the 5th respondent to join the minor as a dependant to the petitioner's NHIF account.
 - (i) An order of mandatory injunction compelling the 2nd respondent to include the minor's details in the 2nd respondent's pupil data bank to be submitted to the 4th respondent's NEMIS registration as SZBK, and the minor's father as VKM.
 - (j) An order of prohibitory injunction against the 2nd respondent from interfering with the petitioner's involvement in the minor's academic well-being and school life, including but not limited to: payment of school fees, attending school events when required, collecting and/or dropping the minor to school, joinder to teachers-parents platforms on social media, receiving school diary, circulars, newsletters or any other correspondence from the 2nd respondent to parents throughout the minor's school life in the 2nd respondent's school.
 - (k) An order for compensation by way of general damages against the respondents jointly and severally.
 - (l) Costs of the Petition.
4. The 1st respondent opposed the Petition and filed her Grounds of Opposition on 21st February 2023 contending that:
- (a) The issuance of a Certificate of Birth is not a role exercised by the 1st respondent and there is no obligation bestowed upon the 1st respondent to submit the name of the petitioner for inclusion in the Certificate of Birth.
 - (b) Article 53(1)(a) of the Constitution guarantees the minor the right to a name. The law does not insist on a particular name; and there is no express provision mandating the 1st respondent to include the names proposed by the petitioner as the minor's name.
 - (c) Section 12 of the Births and Deaths Registration Act requires that if a child is born to unmarried parents, the name of the father cannot be entered in the Certificate of Birth without consent.
 - (d) Parental responsibilities by dint of Article 53(1)(e) and the Children Act is inherent upon both parties.



- (e) The Petition as drawn is misconceived in so far as the petitioner alleges that failure to have his name included in the minor's Certificate of Birth is an act of torture, cruelty, inhumane or degrading treatment.
5. On behalf of the 3rd and 4th respondents, a Replying Affidavit sworn on 14th September 2022 was filed by the Civil Registration Officer, Mr. Patrick Lukale Ingutiah, on 20th September 2022. He averred that the Registrar of Births and Deaths is required by Section 7(1) of the *Births and Deaths Registration Act*, Chapter 149 of the Laws of Kenya to keep a Register of Births with the prescribed particulars of every birth being notified to the Registrar for registration. He explained that the prescribed particulars are set out in Section 2 of the Act to include the names, residence, occupation and nationality of the parents. Mr. Ingutiah further deposed that it is the duty of every person notifying the Registrar of the birth of a child to certify to the correctness of the entry by signing, or if illiterate, by fixing his mark to the Register; and therefore that the Registrar relies on information given.
6. As regards the instant matter, Mr. Ingutiah averred that the prescribed particulars were supplied by the 1st respondent as the child's mother; and added that she would ordinarily be expected to give the particulars of the father of the child. He made reference to Sections 12 and 14 of the *Births and Deaths Registration Act* to support his averment that in the absence of proof of marriage the Registrar could not effect any change of particulars in the Register; and that in any case, such change could only be effected within 2 years of registration.
7. Thereupon, the petitioner filed a Further Affidavit on 22nd November 2022 supplying details of expenses incurred and related incidents to show that the minor was being subjected to needless hardship by the 1st respondent; particularly in not being supplied with uniforms and sports kits as and when required. He reiterated his assertions that the 1st respondent deliberately kept him away from the minor and even declined material support from him at times. He chronicled the various attempts he has made towards a mediated settlement of their dispute; all of which were thwarted by the 1st respondent. He concluded his affidavit by setting out the missed opportunities the minor was unable to benefit from by reason only of the 1st respondent's adamant posturing, such as savings account packages for children, as well as conducive insurance covers. He consequently urged that the Petition be allowed.
8. The petitioner filed a Further Affidavit and a Further Further Affidavit on 18th January 2023 to demonstrate that the 1st respondent had contemporaneously moved the Tononoka Children's Court alleging that he had abdicated his parental responsibilities towards the minor and yet she continued to omit his name in her references to the minor. The petitioner thus contended that the 1st respondent is out to scuttle this Petition by her moves aforementioned.
9. When this Petition came up for directions on 20th January 2023, Mr. Makuto for the 3rd and 4th respondents indicated that the 3rd respondent was willing to effect the changes prayed for by the petitioner and issue a new Certificate of Birth if a joint application to that effect was made by the petitioner and the 1st respondent as the parents of the minor. Accordingly, an order was made by the Court to that effect and the changes made. Counsel for the petitioner, Mr. Muriithi, reported back on 1st March 2023 and confirmed that:
- (a) the petitioner's name had been entered in the minor's Certificate of Birth;
 - (b) The petitioner was able to enlist the minor as a beneficiary under his account with the NHIF Scheme;
 - (c) The petitioner had also obtained an insurance cover for the minor with GA Insurance.



10. Thus, while Mr. Koech, counsel for the 1st respondent, was of the view that the Petition is spent in view of the compliance by the 3rd and 4th respondents, Mr. Muriithi, counsel for the petitioner was of the view that there were pending issues raised in the Petition that required resolution. He accordingly prayed that Judgment be rendered thereon on the basis of the affidavits filed by the petitioner and the 3rd and 4th respondents. In the circumstances, of the petitioner's prayers, the parties are in agreement that the following have been settled and are therefore spent: are reiterated hereunder (as listed in paragraph 3 of this Judgment) so as to place the unresolved issues in proper perspective:
- (f) An order of certiorari to remove into this Court and cancel the Certificate of Birth No. xxxx of any other Certificate of Birth issued by the 3rd respondent that does not describe the minor in her full name.
 - (g) An order of mandamus compelling the 3rd respondent to issue the minor with a Certificate of Birth describing the minor in the minor's full name, SZBK, and replacing the entry of XXXXXXXXXXXX against the name and surname of the Father with the petitioner's name: VKM.
 - (h) An order of mandamus compelling the 5th respondent to join the minor as a dependant to the petitioner's NHIF account.
 - (i) An order of mandatory injunction compelling the 2nd respondent to include the minor's details in the 2nd respondent's pupil data bank to be submitted to the 4th respondent's NEMIS registration as SZBK, and the minor's father as VKM.
 - (j) An order of prohibitory injunction against the 2nd respondent from interfering with the petitioner's involvement in the minor's academic well-being and school life, including but not limited to: payment of school fees, attending school events when required, collecting and/or dropping the minor to school, joinder to teachers-parents platforms on social media, receiving school diary, circulars, newsletters or any other correspondence from the 2nd respondent to parents throughout the minor's school life in the 2nd respondent's school.
11. Hence, the only outstanding prayers are:
- (k) An order for compensation by way of general damages against the respondents jointly and severally.
 - (l) Costs of the Petition.
12. And, purely for the avoidance of doubt, the Court needs to pronounce itself on the following prayers:
- (a) A declaration that the minor has a right to have the minor's complete name, SZBK, in her Certificate of Birth.
 - (b) A declaration that the minor has a right to have the name of her father, VKM, in her Certificate of Birth as her father.
 - (c) A declaration that the respondents have acted contrary to the best interest of the child principle under Article 53(2) of the Constitution.
 - (d) A declaration that the respondents have acted contrary to the rule of law principle under Article 10 of the Constitution.
 - (e) A declaration that the minor's rights under Articles 25(1), 28, 35(1) & (2), 40 and 43(1)(a) of the Constitution have been violated by the respondents.



13. I note that, although in their skeletal submissions filed herein on 10th November 2022 and 22nd November 2022, respectively, counsel for the petitioner and the 3rd and 4th respondents did not address the Court on the aspect of compensation, an opportunity for highlighting the submissions was given to the parties on 21st March 2023. Mr. Muriithi urged the Court to note that it was not disputed that the petitioner's particulars were left out by the 1st respondent when the Registrar of Births was notified of the minor's birth. He therefore relied on *ANW v Attorney General* in which the 3rd respondent was ordered to ensure the correct details were entered in the Register.
14. Counsel further urged the Court to take into account the mistreatment of the petitioner by the 2nd respondent on the instructions of the 1st respondent, to the extent that he was almost declared a persona non grata. He therefore submitted that, since the factual basis of the Petition was unchallenged, he prayed for a declaration that the petitioner's rights had been infringed and that the petitioner be awarded Kshs. 4,000,000/= in compensation for the infringement. Mr. Muriithi relied on *MWK & Another v Attorney General* [2017] eKLR to buttress his proposal, and urged the Court to take into account that, under Section 22 of the Births & Deaths Registration Act, it is a criminal offence to give false information to the Registrar of Births.
15. Mr. Makuto, on his part, submitted that under Section 11 of the *Births and Deaths Registration Act*, a duty is placed on the mother and father to supply information to the Registrar. He faulted the petitioner for not taking action sooner, having conceded at paragraph 9 of the Supporting Affidavit that he became aware of the birth of the minor on 14th October 2018. He pointed out that it was only when the minor went to school that he sought to know the information supplied to the school authorities. In counsel's view, the 3rd respondent cannot be faulted in the circumstances; especially after, at his instance, the parents were prevailed upon by the Court to make a joint application for correction of the Register of Births to include the petitioner's particulars. Thus, Mr. Makuto urged for the dismissal of the Petition against the 3rd and 4th respondents.
16. The centrality of the Bill of Rights in the *Constitution of Kenya* cannot be overemphasized. Thus, in *Attorney General v Kituo Cha Sheria & 7 others* [2017] eKLR, the Court of Appeal aptly reiterated that:
- “Quite beyond argument then, the Bill of Rights in Kenya's constitutional framework is not a minor peripheral or alien thing removed from the definition, essence and character of the nation. Rather, it is said to be integral to the country's democratic state and is the framework of all the policies touching on the populace. It is the foundation on which the nation state is built. There is a duty to recognize, enhance and protect the human rights and fundamental freedoms found in the Bill of Rights with a view to the preservation of the dignity of individuals and communities. The clear message flowing from the constitutional text is that rights have inherent value and utility and their recognition, protection and preservation is not an emanation of state largesse because they are not granted, nor are they grantable, by the State. They attach to persons, all persons, by virtue of their being human and respecting rights is not a favour done by the state or those in authority. They merely follow a constitutional command to obey.”
17. With the foregoing in mind, I have considered the facts as set out by the petitioner, which facts were not refuted by the 1st respondent. The petitioner's averment, at paragraphs 5-15 of the Supporting Affidavit, are that he got to know the 1st respondent through a mutual friend and dated each other for about 8 months during which the minor was conceived. That the minor was born on 14th October 2018 after the relationship between the petitioner and the respondent had ended; and therefore he was



not in a position to be present and to follow up the issues of birth registration. He relied on what the 1st respondent told him as to the steps she had already taken; only to discover later that his name, as the father of the minor, had been omitted entirely from the Certificate of Birth. A copy of the said Certificate was annexed to the Supporting Affidavit as Annexure VKM-2.

18. The petitioner further averred that thereafter, the 1st respondent did all she could to keep him away and thereby prevent him from discharging his parental responsibilities or participating in the upbringing of the minor; thereby necessitating the filing of the instant Petition.
19. The Petition is expressed, at paragraphs 7 and 8 thereof, to have been brought by the petitioner not only on behalf of the minor, but also on his own behalf, in so far as it pertains to the upbringing of the minor. Accordingly, it was anchored on Article 53(2) of Chapter 4 of the Constitution, which provides that:

- “(1) Every child has the right—
- (a) to a name and nationality from birth;
 - (b) to free and compulsory basic education;
 - (c) to basic nutrition, shelter and health care;
 - (d) to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour;
 - (e) to parental care and protection, which includes equal responsibility of the mother and father to provide for the child, whether they are married to each other or not; and
 - (f) not to be detained, except as a measure of last resort, and when detained, to be held—
 - (i) for the shortest appropriate period of time; and
 - (ii) separate from adults and in conditions that take account of the child’s sex and age.
- (2) A child’s best interests are of paramount importance in every matter concerning the child.

20. The petitioner also relied on various provisions of the Children Act, 2001. I must mention at the outset that this Petition was filed on 21st June 2022, before the coming into force of the Children Act No. 29 of 2022. Obviously the numbering of the provisions have to some extent changed. I have therefore made reference to the applicable provisions as they appear in the 2022 Act. Thus, Section 8 of the Children Act states:

- (1) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies—
- (a) the best interests of the child shall be the primary consideration;
 - (b) the best interests of the child shall include, but shall not be limited to the considerations set out in the First Schedule.



- (2) All judicial and administrative institutions, and all persons acting in the name of such institutions, when exercising any powers conferred under this Act or any other written law, 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— Best interests of the child.
- (a) safeguard and promote the rights and welfare of the child;
 - (b) conserve and promote the welfare of the child; and
 - (c) secure for the child such guidance and correction as is necessary for the welfare of the child, and in the public interest.
- (3) In any matters affecting a child, the child shall be accorded an opportunity to express their opinion, and that opinion shall be taken into account in appropriate cases, having regard to the child’s age and degree of maturity.
- (4) The Cabinet Secretary shall issue guidelines to give effect to this section.
21. Additionally, Sections 13 to 25 of the *Children Act* further amplify the provisions of Article 53 of the *Constitution* as to the right to parental care, social security, basic education, healthcare, inheritance and freedom from torture, cruel inhuman or degrading treatment. There is therefore no gainsaying that the subject minor is entitled to a name, including the use of the name of her father, and for the name and particulars of her father to be inserted in her Certificate of Birth for use in school and other official records. The assertion by the 3rd respondent, at paragraph 12 of its Replying Affidavit is therefore clearly misguided. In that paragraph Mr. Ingutiah deposed that:

“...according to section 12 of the *Births and Deaths Registration Act* cap 149 Laws of Kenya, no person shall be entered in the register as a 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 the mother were married according to the law or in accordance with some recognized custom.”

22. I say so because Section 12 of the *Births and Deaths Registration Act* received the full attention of the Court (Hon. Ngugi, J., as she then was) in *L.N.W v Attorney General & 3 others* [2016] eKLR, and in a judgment delivered on 26th May 2016, the learned judge held:

The law must demand that fathers of children born outside marriage step up to the plate and take parental responsibility for their children. This must begin with the provisions in respect of registration of the birth of such children. A situation in which such children and their mothers are discriminated against on the basis of the law cannot be allowed to continue under our transformative constitution.

111. It must be obvious by now that in my view, this petition is merited, and a challenge to section 12 of the Registration of Births and Deaths Act is long overdue. My finding, and I so hold, is that section 12 of the Registration of Births and Deaths Act, which contains the requirement of the consent of a father of a child born out of wedlock to have his name entered in the births register and the child’s birth certificate, is unconstitutional and in violation of Articles 27, 28 and 53 of the *Constitution*. Given the submissions of the respondent with respect to what it is intended to achieve, my finding is that the section cannot be justified under Article 24 of the *Constitution*.



23. The Court then proceeded to issue the following orders:
- a) I declare that section 12 of the *Registration of Births and Deaths Act* is inconsistent with Articles 27, 53 (1) (a) and (e) and 53 (2) of the *Constitution* and is therefore null and void.
 - b) I direct that section 12 of the Registration of Births and Deaths Act be construed with the necessary alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with Articles 27, 53 (1) (a) and (e) and 53 (2) of the *Constitution*.
 - c) I declare that all children born out of wedlock shall have the right and or liberty to have the names of their fathers entered in the births registers.
 - d) I direct the Registrar of Births And Deaths to, within 45 days hereof, put in place mechanisms to facilitate the entry into the birth register of the names of the fathers of children born outside wedlock in compliance with order (c) above.
24. In the premises, the petitioner is entitled to a declaration in terms of prayer (a) and (b) of the Petition. As for prayers (c) to (j) of the Petition, it is noted that the 3rd respondent was all along prepared and ready to make the needed changes in the Register of Births to include the particulars of the petitioner, and this has already been done and a new Certificate of Birth issued. The 3rd respondent, and by extension the 4th respondent cannot be faulted for not including the name of the petitioner when no such particulars were provided in the first place. I note that, although the petitioner alleged connivance on the part of the respondents, no proof was given in support thereof.
25. In the same vein, although the petitioner alleged breach of Article 25(a) of the *Constitution*, there is no proof that either he or the minor was subjected to torture by the respondents. It must be remembered that, for purposes of Article 25(a) of the *Constitution*, torture refers to deliberate infliction of pain. In *Republic v Minister for Home Affairs and others Ex parte Stanze* [2007] eKLR, for instance, the Court stated thus;
- “Torture means inflicting of intense pain to the body or mind; to punish, to extract confession or information or to obtain sadistic pleasure. It means infliction of physical founded suffering or the threat to immediately inflict it, where such infliction or threat is intended to elicit or such infliction is incidental to means adopted to elicit, matters of intelligence or forensic proof and the motive is one of military, civic or ecclesiastical interest. It is a deliberate inhuman treatment causing very serious and cruel suffering “inhuman treatment” is physical or mental cruelty so severe that it endangers life or health. It is an intentional act which, judged objectively, is deliberate and not accidental, which causes serious mental or physical suffering or injury or constitutes a serious attack or human dignity.”
26. There is no indication that the 1st respondent, let alone the 2nd, 3rd, 4th or 5th respondents, set out to inflict such pain on either the minor or the petitioner. The annexures to the petitioner’s affidavits, including the transcripts of the messages exchanged between the petitioner and the 1st respondent show that 1st respondent was not averse to receiving child support from the petitioner. I therefore find no basis for holding that the petitioner’s or the minor’s rights under Article 25(a) of the *Constitution* were ever violated.
27. Action having been taken to include the particulars of the petitioner in the minor’s Certificate of Birth, to which end, the initial Certificate of Birth was recalled and replaced accordingly, it is evident that prayers [f] and [g] of the Petition are spent. Mr. Muriithi further confirmed that the petitioner has had



the minor's name enrolled as one of his dependants for purposes of NHIF. Hence, prayers [i] and [j] are, in essence, consequential to the issuance of the new Certificate of Birth.

28. Turning now to the petitioner's prayer for compensation, which is one of the reliefs provided for in Article 23(3) of the Constitution, it is the duty of the Court to determine whether, in the particular circumstances of this case it is an appropriate remedy. In Minister of Health & Others v Treatment Action Campaign & Others (2002) 5 LRC 216 at page 249 it was held:-

"...appropriate relief will in essence be relief that is required to protect and enforce the Constitution. Depending on the circumstances of each particular case, the relief may be a declaration of rights, an interdict, a mandamus, or such other relief as may be required to ensure that the rights enshrined in the Constitution are protected and enforced. If it is necessary to do so, the court may even have to fashion new remedies to secure the protection and enforcement of these all important rights...the courts have a particular responsibility in this regard and are obliged to "forge new tools" and shape innovative remedies, if need be to achieve this goal."

29. Accordingly, the applicable principles to compensation as a remedy were considered in Gitobu Imanyara & 2 others v Attorney General [2016] eKLR in which the Court of Appeal held:

"...It seems to us that the award of damages for constitutional violations of an individual's right by state or the government are reliefs under public law remedies within the discretion of a trial court, however, the court's discretion for award of damages in Constitutional violation cases though is limited by what is "appropriate and just" according to the facts and circumstances of a particular case. As stated above the primary purpose of a constitutional remedy is not compensatory or punitive but is to vindicate the rights violated and to prevent or deter any future infringements. (Emphasis supplied) The appropriate determination is an exercise in rationality and proportionality. In some cases, a declaration only will be appropriate to meet the justice of the case, being itself a powerful statement which can go a long way in effecting reparation of the breach, if not doing so altogether. In others, an award of reasonable damages may be called for in addition to the declaration..."

30. Similarly, in the South African case of Mvumvu v Minister for Transport [2011] ZACC which has been cited locally in numerous decisions, the court stated as follows:

"That in determining a suitable remedy, the courts are obliged to take into account not only the interests of the parties, whose rights are violated, but also the interests of good government, these compelling interests need to be carefully weighed".

In addition this was also crystalized in the matter of the Residents of Industry House & 8 others vs Minister of Police & 9 others (2021) ZACC at 37;

"The court observed that once the appropriate relief is established it becomes unnecessary to award assessment of damages as an additional remedy where the object of the damages is not to compensate the claimants of the loss they have suffered but to uphold the Constitution. It is not fair to burden the public purse with financial liability where there are alternative remedies that can sufficiently achieve that purpose. To do otherwise will effectively amount to punishing the taxpayers for conduct for which they bear no responsibility given the many pressing demands on the fiscus, it is not appropriate to use scarce resources to pay



damages to individuals for purpose of enforcing rights conferred on the general public where there are other effective methods of upholding the Constitution.”

31. In the circumstances of this case, it is instructive that the petitioner got to know of the minor’s birth on the date she was born. There is no justification as to why he had to wait until 26th June 2022 to enforce his parental rights. I also note that, at the instance of counsel for the 3rd respondent, a new Certificate of Birth has already been issued in terms of the information supplied jointly by the petitioner and the 1st respondent. The culpability of the 2nd, 4th and 5th respondents was not clearly delineated. I therefore find no reason to award the petitioner any compensation in addition to the declaration of rights as per paragraph 24 herein above.
32. In the result, it is hereby ordered that:
- (a) A declaration be and is hereby given that the minor has a right to have the minor’s complete name, SZBK, in her Certificate of Birth.
 - (b) A declaration be and is hereby given that the minor has a right to have the name of her father, VKM, in her Certificate of Birth as her father.
 - (c) An order of mandatory injunction be and is hereby granted compelling the 2nd respondent to include the minor’s details in the 2nd respondent’s pupil data bank to be submitted to the 4th respondent’s NEMIS registration as SZBK, and the minor’s father as VKM.
 - (d) Each party to bear own costs of the Petition.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 23RD DAY OF MAY 2023

OLGA SEWE

JUDGE

