



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

MISC. APPLICATION NO. 102 OF 2018

IN THE MATTER OF RAB (MINOR)

AND

IN THE MATTER OF BIRTHS & DEATHS REGISTRATION ACT, CAP 149.

LAWS OF KENYA

AND

IN THE MATTER OF THE CHILDREN'S ACT, 2001.

RAB (MINOR) THROUGH

IKO & GKM; MOTHER,

FATHER & NEXT FRIEND RESPECTIVELY.....APPLICANTS

VERSUS

THE REGISTRAR OF BIRTHS.....RESPONDENTS

RULING

1. The above matter was brought by a petition filed by IKO and GKM on the 26th July, 2018 seeking the following orders;

a. A declaration that the minor RAB is entitled to a name and nationality at birth as envisaged in the Constitution.

b. An order of this honorable Court compelling the Respondent to rectify the register of births and re issue a certificate of birth to read RAK instead of RAB and have the name of the co-petitioner GKM included as the father in place of that of DWB.

2. The applicant is based on the grounds on the face of it and supported by the Affidavit of the Applicant in which she has deposed that at the time of entering of the father's name in the register of births, they were not living together as husband and wife and that the 1st Applicant IKO was engaged to DWB and she thought it fit to put his name on the birth certificate as the father of the child as he was materially supporting her at the time.

3. Article 53 Section 1(a) of the Constitution 2010 gives every child the right to a name. In the case of **L.N.W. v Attorney General & 3 others (2016) eKLR** the court declared 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."

4. The child in this case here is not any different. He was born when the biological parents were not together and the step father agreed to put his name in the birth certificate not knowing that it would complicate the child's life in future.

5. This Court cannot deny the biological father his right to have his name in the birth certificate of his biological son.
6. This Court also takes note of the fact that the 1st Applicant one, DWB has no objection to his name being struck from the birth certificate and replaced with the name of the minor's biological father's name.
7. In light of our very clear constitutional provisions of equality, non-discrimination and the rights of children to parental support from both parents, among other rights, I appreciate that, as the respondents submit, the entry of the name of the father of a child born outside marriage will not necessarily mean that the child will get the care and attention that it ought to get from its father.

DETERMINATION.

1. The petition dated 24th July 2018 is allowed in terms of prayer (i) and (ii) thereof.
2. I direct that the Registrar of Birth re-issue a certificate of birth with the names changed to read RAK instead of RAB
3. The father's names in the said birth certificate to be changed from DW B to GKM as the father.
4. With respect to costs, I direct that each party to bear his costs of the petition.

DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 15TH DAY OF FEBRUARY, 2019

ASENATH ONGERI

JUDGE OF THE HIGH COURT OF KENYA, NAIROBI