



**In re BDKK (Minor) (Miscellaneous Application E114 of 2025)  
[2026] KEHC 44 (KLR) (Family) (16 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 44 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
MISCELLANEOUS APPLICATION E114 OF 2025  
H NAMISI, J  
JANUARY 16, 2026  
IN THE MATTER OF BDKK (MINOR)**

**BETWEEN**

**KZI ..... APPLICANT**

**AND**

**SCS ..... 1<sup>ST</sup> RESPONDENT**

**THE HON ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**THE REGISTRAR OF BIRTHS AND DEATHS NAIROBI .... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. Before the Court is Notice of Motion dated 30 April 2025 seeking the following orders:
  - i. That the Applicant’s name be deleted and/or removed from the Certificate of Birth of BDKK (minor) which was processed by the Civil Registry Department of Births and Deaths at the National Registry;
  - ii. That the 3<sup>rd</sup> Respondent be ordered to remove and/or delete the Applicant’s name from the Certificate of Birth of BDKK (minor) entry number 0XXXXXX27;
  - iii. That the costs of this Application be in the suit.
2. The Application is supported by Affidavits sworn by the Applicant. The Application is premised on the grounds that:
  - i. The Applicant is not the father of BDKK (minor);



- ii. The Applicant found out that he is not the minor's father through a DNA test report issued on 22 April 2025 by Labtest Zone Diagnostics;
  - iii. It is in the best interest of the minor that this Application is allowed;
  - iv. The Application has been brought without delay;
  - v. It is in the interest of justice and fairness that this Application be allowed.
3. The minor was born on 9 April 2017. When the Certificate of Birth was issued, the same bore the names of the Applicant, as father and 1<sup>st</sup> Respondent as mother. A DNA test conducted later on revealed that the Applicant is not the biological father of the minor. The Applicant now wishes to have his name removed from the minor's Certificate of Birth.
  4. In his Affidavit, the Applicant confirms that the Certificate of Birth bears his name as the father of the minor. He avers that at the time of the minor's birth, the 1<sup>st</sup> Respondent falsely represented to the Applicant that he was the minor's biological father. Soon thereafter, the 1<sup>st</sup> Respondent began sending demand letters to the Applicant, seeking maintenance for the minor. This culminated in a Parental Responsibility Agreement that was signed before the Director of Children Services, Nairobi County, on 28 March 2024.
  5. It is the Applicant's case that during a visit by the minor to the Applicant's house in April 2025, the Applicant scrolled through a phone that previously belonged to the 1<sup>st</sup> Respondent, which was now in the possession of the minor. It is at that point that the Applicant came across several other demand letters issued to a third party in respect of a child named Nicholas. The Applicant's suspicions led to a paternity test which was conducted at Labtest Zote Diagnostics, Nairobi. The results revealed that the Applicant is not the biological father of the minor herein.
  6. The Applicant provided a copy of DNA results dated 22 April 2025.
  7. The record indicates that the 1<sup>st</sup> Respondent has neither entered appearance nor filed any response to the Application. In a matter of such gravity, which touches upon the status and identity of a minor child, the Court is naturally circumspect about proceeding *ex parte*. However, the wheels of justice cannot be halted by the indolence or deliberate evasion of a party, provided that due process has been served.
  8. I have meticulously examined the Affidavit of Service sworn by Margaret Wamutira Muthii, Advocate, on 9 May 2025. The Deponent avers that on 9 May 2025, she effected service of the Notice of Motion, Supporting Affidavit, and Annexures upon the 1<sup>st</sup> Respondent via her email address, seroneyserah@gmail.com. A further Affidavit of Service sworn on 12 June 2025 confirms service of a Mention Notice for 24 September 2025 via the same email channel. Additionally, a third Affidavit dated 24 September 2025 confirms service of a further mention notice for 5 November 2025.
  9. The question arises: Is service by email sufficient to ground a judgment in a status matter? The Civil Procedure (Amendment) Rules, 2020 introduced significant modernizations to our procedural law. Specifically, Order 5 Rule 22B provides for service by electronic mail.
  10. Order 5 Rule 22B(1) stipulates that summons may be sent to the defendant's last confirmed and used email address. The Rule further states that service shall be deemed to have been effected when the sender receives a delivery receipt. This progressive provision was dissected by the Court in *BOD County Referral Hospital Kitale & another v DN KEHC 5344 (KLR)*, where the Court cautioned that "Sent is not the same as Delivered." The Court in that instance required evidence of a delivery receipt to distinguish from a mere sent item.



11. In the instant case, the Applicant's Counsel has attached printouts of the sent emails. The Applicant's Affidavit annexes correspondence from the 1<sup>st</sup> Respondent's previous Advocates (Njuguna & Kirera Advocates) which utilized the digital ecosystem for demands. Furthermore, the email address used for service is the same one used by the 1<sup>st</sup> Respondent in her personal capacity. Given the multiple attempts at service over a period spanning May to September 2025, and the lack of any "bounce back" or non-delivery notification, this Court is satisfied on a balance of probabilities that the 1<sup>st</sup> Respondent is aware of these proceedings and has chosen to abstain.
12. Consequently, pursuant to Order 5 Rule 22B and the principles of natural justice which dictate that a party be given an opportunity to be heard—not that they must essentially take it—I find that the 1<sup>st</sup> Respondent was properly served. The matter, therefore, proceeds on the basis of the Applicant's uncontroverted evidence and the submissions of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.
13. The Registrar of Births and Deaths, represented by the Attorney General, filed a Replying Affidavit by Lucia Mulandi. The Registrar adopts a classic administrative defense: that the Register was made correctly at the time based on the information provided by the informants (parents) under Section 10 and Section 11 of the *Births and Deaths Registration Act*.
14. The Registrar correctly points out that Section 12 of the Act restricts the entry of a father's name without consent or proof of marriage. Since the Applicant consented at the time, the Registrar argues the entry was procedurally regular. However, the Registrar concedes in paragraph 16 of the Affidavit that:

“The 3rd Respondent will remove/delete the applicant's name... upon determination by court that the applicant is not the biological father of the minor.”
15. This concession effectively narrows the dispute to a single judicial determination: Has the Applicant proved, to the required standard, that he is not the father and that the register is consequently erroneous?
16. The Applicant filed submissions in support of the Application. The Respondents did not file any submissions.

### **Analysis & Determination**

17. The Applicant relies on a DNA test conducted without a court order. In family law proceedings, the admissibility of such evidence is often contested on grounds of chain of custody or lack of mutual consent. However, in this case, the 1<sup>st</sup> Respondent has not objected.
18. The science of DNA profiling has revolutionized the adjudication of paternity disputes. As observed by the Court of Appeal in *J.L.N. v Director of Children's Services & 4 others eKLR*, courts can no longer rely on archaic presumptions when scientific certainty is available. The *Evidence Act* allows for the admissibility of expert opinion.
19. In *K.L.E v J.K.M & 3 others eKLR*, the Court dealt with a succession dispute where the paternity of beneficiaries was in question. The Court ordered DNA testing, reasoning that certainty was preferable to speculation, even where the alleged father was elderly. The principle derived is that where biological lineage is the foundation of a legal right (succession or maintenance), the biological truth is the primary fact in issue.
20. Furthermore, regarding the standard of proof, the Applicant must prove his case on a balance of probabilities. A DNA test returning a 0.00% probability of paternity is definitive. The report by



- Labtest Zote Diagnostics is detailed, analysing over 20 genetic markers. There is no evidence to suggest the samples were tampered with or that the report is a forgery.
21. I find the DNA report to be admissible, credible, and sufficient to rebut any presumption of paternity that may have arisen from the Applicant's prior cohabitation with the 1<sup>st</sup> Respondent or his naming on the Certificate of Birth. The biological fact is now established: The Applicant is not the father of the child.
22. Article 35 (2) and Article 53 (2) of *The Constitution* 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."
23. 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.
24. 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).
25. In re Baby LWW (Child) 2021 eKLR, the Court stated,
- "The law guards the rights of a child jealously. To my mind this is because children are vulnerable members of our society and although they have parents, it is paramount that the law lends its hand in protecting them to ensure that they can enjoy the rights granted to them by the law. Starting with *the Constitution* of Kenya 2010 and the relevant statutes thereunder as well as the international instruments, it is evident that there is a common thread running through all these pieces of legal instruments to the effect that the best interests of the child is of paramount importance. Article 53 (1) (a) of *the Constitution* of Kenya 2010 provides that 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....."
26. 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 his identity on incorrect information with respect to his paternity, as is currently contained in the Certificate of Birth. For that reason, it is in the minor's best interests that the name of the Applicant be deleted from the Certificate.
27. In the circumstances, I allow the Summons and make the following orders:
- i. A declaration is hereby issued that the Applicant, KZI, is not the biological father of the minor, BDKK (born on 9 April 2017).



- ii. The Registrar of Births and Deaths is hereby directed to delete, remove, strike out and /or correct from the Register and the minor's Certificate of Birth serial Number 0XXXXXX27 the name of KZI as his father;
- iii. Owing to the nature of the case, I make no orders as to costs.

**DATED & DELIVERED AT NAIROBI THIS 16 DAY OF JANUARY 2026**

**HELENE R. NAMISI**

**JUDGE OF THE HIGH COURT**

Delivered on virtual platform in the presence of:

For Applicant: Ms. Muthii

For 1<sup>st</sup> Respondent: N/A

For 2<sup>nd</sup> Respondent: Ms. Chiringa

For 3<sup>rd</sup> Respondent: Ms Chiringa

Court Assistant: Lucy Mwangi

