In re WBN (Minor) (Miscellaneous Application E195 of 2025)
[2026] KEHC 1718 (KLR) (Family) (13 February 2026) (Judgment)

Neutral citation: [2026] KEHC 1718 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

FAMILY

MISCELLANEOUS APPLICATION E195 OF 2025

H NAMISI, J

FEBRUARY 13, 2026

IN THE MATTER OF MBN (MINOR)

BETWEEN

JWN ..... APPLICANT

AND

SNN ..... 1ST RESPONDENT

REGISTRAR OF BIRTHS AND DEATHS ..... 2ND RESPONDENT

DEPARTMENT OF CIVIL REGISTRATION ..... 3RD RESPONDENT

ATTORNEY GENERAL ..... 4TH RESPONDENT

JUDGMENT

1. Before the Court is Originating Summons dated 23 June 2025 seeking:

   i. Spent;

   ii. That this Honourable Court be pleased to issue an order directing the Registrar of Births and Deaths and the Department of Civil Registration to remove, delete, and/or strike out the name of the 1st Respondent, SNN, from the Birth Certificate of the child/minor, MBN;

   iii. That the Honourable Court be pleased to issue an order directing that the child be issued with a fresh Birth Certificate which does not bear the name of the 1st Respondent and the father be indicated as "unknown";

   iv. That this Honourable Court be pleased to order that the minor, formerly known as MBN, shall henceforth be known as MB, and all relevant records be amended accordingly;

v. That the costs of this Application be provided for.

2. The Applicant invokes the unlimited original jurisdiction of this Court under Article 165(3) of *The Constitution*, alongside the specific statutory provisions of Sections 4, 5, 6, 7, 8, and 11 of the *Children Act*, and section 12 of the *Births and Deaths Registration Act*.

3. The central grievance presented for judicial determination concerns the civil registration records of the minor child born on 5 July 2024. The Applicant, being the biological mother of the Minor, seeks the intervention of this Court to rectify the Register of Births by expunging the name of the 1st Respondent from the Minor's Certificate of Birth and subsequently altering the Minor's name to exclude the 1st Respondent's surname.

4. The application is predicated on the emergence of scientific evidence—specifically a DNA paternity test—which conclusively excludes the 1st Respondent as the biological father of the Minor. This scientific reality stands in stark contradiction to the legal reality currently captured in the Register of Births, where the 1st Respondent is listed as the father, and the mother's marital status is recorded as 'Married'.

5. The Application is supported by the Affidavit sworn by the Applicant on 23 June 2025, together with several annexures, most notably the Birth Notification from St. Francis Community Hospital, the Birth Certificate Entry No. 026XXXXXXXXX397, and a DNA Paternity Test Report from the Kenya Medical Research Institute (KEMRI) dated 16 December 2024.

6. Upon service of the pleadings, the 1st Respondent did not enter an appearance, nor did he file any response to the application. His lack of participation, despite being the party most directly affected by the potential stripping of parental status, is a factor this Court must weigh heavily in its evidential assessment.

7. The 2nd, 3rd, and 4th Respondents (hereinafter "the State Respondents") entered an appearance and filed a Replying Affidavit sworn by Milkah Diana Odalo Nyende, a Principal Civil Registration Officer, on 3 July 2025. While the State Respondents do not contest the scientific findings, they have raised significant points of law regarding the statutory mandate of the Registrar, the presumption of marriage recorded in the Register, and the doctrine of exhaustion of administrative remedies.

8. The Application was canvassed by way of written submissions. The State Respondents relied on their Replying Affidavit and did not file any submissions.

Brief Background

9. The Minor, M.B.N, was born on 5 July 2024 at St. Francis Community Hospital, Kasarani, Nairobi. The Applicant is the biological mother.

10. According to the Applicant's Supporting Affidavit, at the time of the Minor's conception, she was in a friendship/relationship with the 1st Respondent. However, she candidly admits that the 1st Respondent was not responsible for the pregnancy. Despite knowing this fact, the Applicant and the 1st Respondent jointly agreed to list him as the father on the child's Certificate of Birth. The reason proffered for this falsification of public records was fear of parental backlash and societal pressure.

11. Consequently, on 7 August 2024, the birth was formally registered in the Nairobi Registry. The Birth Certificate issued lists the 1st Respondent as the father.

12. The State Respondents, in their Replying Affidavit, annexed a copy of the Register of Birth (Form B1) marked as "MDON1". This document reveals a critical detail not explicitly highlighted by the

Applicant: under Column 10 (Marital Status), the option 'Married' is ticked. This implies that the registration was not merely a voluntary acknowledgment of paternity by unmarried persons, but was processed under the legal presumption that the child was born in wedlock, or that the parties presented themselves as a married couple to the Registrar. This distinction activates specific provisions of the *Evidence Act* regarding the presumption of legitimacy.

13. Subsequent to the registration, and for reasons not elaborately detailed but presumably linked to the social complications mentioned in the pleadings, the parties sought to establish the true paternity of the child. A DNA paternity test was conducted at the Kenya Medical Research Institute (KEMRI). The DNA Paternity Test Report dated 16 December 2024 concludes that the 1st Respondent is excluded as the biological father of the tested child. The report bears a disclaimer: "NB: This result is for personal knowledge and thus is not admissible in a court of law." This disclaimer has been flagged by the State Respondents as a point of contention, requiring judicial interrogation regarding admissibility.

14. The Applicant avers that the continued presence of the 1st Respondent's name on the Birth Certificate is contrary to the best interests of the child. She submits that the child is in urgent need of medical vaccination services which require a valid and rectified Birth Certificate. While the specific administrative barrier to vaccination caused by the presence of a father's name is not fully particularized, the Court takes judicial notice that discrepancies in identification documents often lead to bureaucratic paralysis in accessing government services such as the Social Health Authority (SHA) or passport issuance.

The Applicant's Submissions

15. The Applicant submits that the High Court has unlimited original jurisdiction under Article 165(3)(a) of *The Constitution* and specific power under section 12 of the *Births and Deaths Registration Act* to order the correction of birth entries. Reliance is placed on the cases of In the Matter of Baby K eKLR and JMM v. The Registrar of Births and Deaths & Another eKLR to demonstrate that the Court acts as the ultimate guardian of the child's identity.

16. The Applicant argues that DNA technology has transformed parentage disputes, citing JWN v. PNK & Another eKLR. She contends that the gold standard of DNA testing has irrefutably excluded the 1st Respondent. The inclusion of his name, though initially consensual, was erroneous in fact and must yield to the biological truth.

17. Citing Article 53(2) of *the Constitution* and section 8 of the *Children Act*, the Applicant argues that a child's right to a name and identity is fundamental. Maintaining a legal fiction on the Birth Certificate perpetuates a falsehood that will cause the child confusion and psychological distress. Reliance is placed on L.N.W v. Attorney General & 3 Others eKLR and FMM v. LGS & 2 Others eKLR to support the position that accurate parentage records are a component of human dignity.

The State Respondents' Case

18. The State Respondents, through the Office of the Attorney General and the sworn Affidavit of Milkah Diana Odalo Nyende, present a defence grounded in strict statutory interpretation. They assert that the Registrar acted lawfully under sections 10 and 11 of the *Births and Deaths Registration Act* by entering the particulars provided by the informants (the parents) at the time of birth. Since the parents indicated they were married and provided the details voluntarily, the entry was legally valid at its inception.

19. The Respondents argue that section 12 of the Act governs the entry of a father, and the Act does not envisage and, therefore, does not provide for the removal of the name of the father other than where it

has been entered erroneously. They imply that a subsequent change of mind or revelation of paternity does not constitute a clerical error that the Registrar can unilaterally correct without a court order.

20. While acknowledging the DNA report, the Respondents explicitly state in paragraph 9 of their Affidavit: "the office would like to request the court for a verification of the said DNA report from KEMRI before its admitted in court as proof of paternity." This is a challenge to the weight and admissibility of the personal knowledge test.

21. Ultimately, the State Respondents aver that they will comply with the Court's directive, stating they will remove the name "upon determination by court that SNN is not the biological father of the minor."

Analysis & Determination

22. The first hurdle this Court must clear is the question of jurisdiction. The State Respondents have intimated that the Registrar acted within the law, and recent jurisprudence has seen courts decline similar applications for failure to exhaust administrative remedies.

23. Article 165(3) of *The Constitution* clothes the High Court with unlimited original jurisdiction in civil and criminal matters. However, this jurisdiction is not exercised in a vacuum. It is tempered by the doctrine of exhaustion, which dictates that where a statute establishes a dispute resolution mechanism, a party must utilize that mechanism before approaching the Court.

24. Section 28 of the *Births and Deaths Registration Act* provides:

    (1) The Principal Registrar may, subject to the rules, and on payment of the prescribed fee... correct any error or omission in any register or index.

25. In the very recent ruling of JMM v CMM & another (Miscellaneous Application E334 of 2024) KEHC 4287 (KLR), Justice Rutto of the High Court at Machakos dismissed an application for the removal of a father's name. The learned Judge held:

> "The applicant has invoked sections 12 and 28 of the Act... The mandate to undertake corrections under section 28 is bestowed upon the 2nd respondent... Moving the court before first seeking an administrative intervention from the 2nd respondent constitutes an abuse of the court process."

26. Similarly, in PON v LN & 2 others (Family Miscellaneous Civil Case E007 of 2024) KEHC 2595 (KLR), the Court dismissed an application to add a father's name, citing the need to exhaust administrative procedures under Section 28.

27. While I hold the decisions of my brother and sister Judges in high regard, I must distinguish the present case from JMM and PON based on the specific facts and the stance taken by the Registrar herein.

28. First, the doctrine of exhaustion is not absolute. As held by the Supreme Court in Speaker of the National Assembly v Karume [1992] KLR 21 and later refined in Republic v Independent Electoral and Boundaries Commission & Another Ex Parte Cord eKLR, the High Court may assume jurisdiction where the alternative remedy is ineffective, futile, or where the body lacks the authority to grant the specific relief sought.

29. In this case, the State Respondents have explicitly admitted in their Replying Affidavit that:

> " The Act does not envisage and therefore does not provide for the removal of the name of the father other than where it has been entered erroneously."

30. By this admission, the Registrar has declared that they lack the statutory power to remove a father's name based on a subsequent DNA test where the initial entry was made by consent or under the presumption of marriage. They view the entry not as a clerical error which they can correct under section 28, but as a substantive status that requires a judicial declaration to alter. Therefore, referring the Applicant back to the Registrar would be a futile exercise in circular bureaucracy. The Registrar has effectively stated they are functus officio regarding the substantive change of parentage without a court order.

31. Second, unlike in JMM case, where the respondents failed to participate, the State Respondents here have actively engaged the Court and requested a determination by Court regarding the biological paternity. They have effectively waived the exhaustion objection by seeking the Court's guidance on the weight of the DNA evidence.

32. Consequently, I find that this Court has jurisdiction. To decline jurisdiction now would leave the Minor in a state of legal limbo, possessing a Birth Certificate that everyone acknowledges is factually incorrect, yet with no administrative avenue to correct it. This would act against the best interests of the child.

DNA Evidence Vs. Presumption of Legitimacy

33. The Applicant seeks to overturn the 1st Respondent's status as a father. This status is anchored in Section 118 of the *Evidence Act*, which establishes a conclusive proof of legitimacy:

> " The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten."

34. The Birth Register indicates the mother's status as married. This triggers the presumption under Section 118. Historically, under common law, this presumption was rebuttable only by proof of non-access. However, the rigidity of Section 118 has come under sharp judicial scrutiny in the era of DNA testing.

35. In FOA v RAO KEHC 6844 [2024] (KLR), the Courts moved towards accepting scientific evidence over legal presumptions. The Court ordered the removal of a father's name after DNA tests proved he was not the biological father, holding that maintaining the name violated the child's right to correct information under Article 35(2).

36. The State Respondents have raised a valid procedural objection regarding the KEMRI report, which is marked "for personal knowledge and thus is not admissible in a court of law." This marking is standard for tests where the laboratory cannot independently verify the identity of the donors (i.e., lacking a strict chain of custody witness).

37. Under section 35 and section 48 of the *Evidence Act*, expert opinions are relevant. The Court must weigh the probative value of the report. In contested paternity cases, a personal knowledge report is often insufficient because of the risk of sample tampering. However, in this case the Applicant swears

under oath that the 1st Respondent is not the father. The 1st Respondent was served and did not appear to contest the application or the DNA results.

38. The DNA test was conducted at KEMRI, a state corporation established under the *Science, Technology and Innovation Act*, giving it a presumption of regularity.

39. In PNO & another v Registrar of Birth and Death & 2 others KEHC 23502 (KLR), Justice Aburili accepted that where parties agree (or do not contest) that the birth certificate contains untrue or misleading information, the Court must order its correction. To require a fresh, court-ordered DNA test when the 1st Respondent has not challenged the existing one would be an undue burden on the Applicant and a delay in justice for the Minor.

40. I am persuaded by the reasoning in MAW v TM [2025] KEHC 9661, where the Court ordered the removal of a non-biological father's name based on DNA evidence, emphasizing that the truth of parentage is a critical component of a child's identity.

41. Therefore, I find that the presumption of legitimacy under section 118 of the *Evidence Act* has been effectively rebutted by the DNA evidence, particularly in the absence of any objection from the 1st Respondent. The conclusive proof of the statute must yield to the scientific proof of biology when the constitutional right to a true identity is at stake.

Best Interests of the Child

42. Article 53(2) of *the Constitution* is the polestar of this Court's jurisdiction in family matters: "A child's best interests are of paramount importance in every matter concerning the child."

43. Section 8 of the *Children Act* reinforces this, mandating that in all actions concerning children, the best interests of the child shall be the primary consideration.

44. The question is: Is it in the best interest of the Minor to have SNN listed as his father?

45. Listing a man as a father imposes legal duties of maintenance and parental responsibility. It also creates inheritance rights. Maintaining a false entry imposes a burden on the 1st Respondent to care for a child that is not his, and gives the Minor a false expectation of inheritance and identity.

46. Section 11 of the *Children Act* gives every child a right to a name and nationality. This implies a right to a true name and identity. A Birth Certificate is the foundational document of a citizen's life. As held in In re Rectification of Particulars in the Birth Certificate of CC KEHC 14141 (KLR), a child has a right to accurate identity information.

47. The State Respondents argue that the register should only be corrected for errors. However, Article 35(2) of *The Constitution* grants every person the right to the "correction or deletion of untrue or misleading information that affects the person." The entry of the 1st Respondent as the father is objectively untrue.

48. In L.N.W v Attorney General , the Court held that statutory barriers in the BDRA cannot stand if they violate the child's rights. While the Registrar may be constrained by the rigid text of Act, this Court is guided by *the Constitution*. It is not in the best interest of the Minor to live a lie. The records must reflect the biological reality to prevent future family disputes, succession battles, and psychological trauma to the child upon discovering the truth later in life.

49. The Applicant prays for the father's name to be indicated as "Unknown." Under section 12 of the *Births and Deaths Registration Act*, if the mother is unmarried (which is the factual truth here, despite the 'Married' tick in the register), the father's name is not entered unless by joint request. Since the

joint request was based on a falsehood, it is voidable. The proper entry for the father's name, in the absence of a biological father acknowledging paternity, is for the column to be left blank or marked "Not Applicable" / "N/A" rather than "Unknown," which is the standard civil registration practice for single-parent entries.

50. The Applicant seeks to change the Minor's name from MBN to MB. The name "N" is the surname of the 1st Respondent. Section 14 of the Act allows for the alteration of a child's name within two years of birth. The Minor was born on 5 July 2024, making him less than 2 years old at the time of this judgment.

51. In MAW v TM KEHC 9661, the Court noted that name changes after two years require a Deed Poll. However, since this child is under two years, the Registrar has the authority to amend the name under the Act without a Deed Poll, provided the parent applies. Since the 1st Respondent is not the parent, the Applicant has the sole authority to determine the name.

52. It is logical and, in the child's, best interest to drop the surname of a man who is not his father to avoid future identity confusion.

53. Accordingly, and for the reasons extensively set out above, I find merit in the Originating Summons dated 23 June 2025. I hereby make the following orders:

    i. It is hereby declared that SNN (ID No. 2XXXXXX8) is not the biological father of the minor child MBN born on 5 July 2024.

    ii. An Order is hereby issued directing the 2nd and 3rd Respondents to rectify the Register of Births by deleting/expunging the name SNN from the particulars of the father in Birth Certificate Entry No. 0XXXXXXXX97.

    iii. The 2nd and 3rd Respondents are hereby directed to issue a fresh Certificate of Birth to the minor, which shall indicate the name of the child as MB.

    iv. Each party shall bear their own costs of this Application.

DATED AND DELIVERED AT NAIROBI THIS 13 DAY OF FEBRUARY 2026

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

For Applicant: Mr Sala h/b Kahara

For 1st Respondent: N/A

For 2 & 3rd Respondents: N/A

Court Assistant Lucy Mwangi