



**RJJK & another v Registrar of Births and Deaths & another;
 FNM (Interested Party) (Miscellaneous Application E062 of 2026)
 [2026] KEHC 5125 (KLR) (Family) (20 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 5125 (KLR)

**REPUBLIC OF KENYA
 IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
 FAMILY
 MISCELLANEOUS APPLICATION E062 OF 2026
 CJ KENDAGOR, J
 APRIL 20, 2026**

BETWEEN

RJJK 1ST APPLICANT

EMN 2ND APPLICANT

AND

THE REGISTRAR OF BIRTHS AND DEATHS 1ST RESPONDENT

THE ATTORNEY GENERAL 2ND RESPONDENT

AND

FNM INTERESTED PARTY

RULING

1. The Applicants have moved the Court via an application dated 12th February 2026 in which they seek the following orders;
 - i. That this Honourable Court be pleased to order rectification of Birth Certificate Entry No. 0XXXXXXXX97 of Minor MJM born on 2nd June, 2018 by removal of the 2nd Applicant’s name as father;
 - ii. That the name of the biological father Francis Ngotho Maina be entered as the father of the minor;
 - iii. That the Registrar of Births and Deaths do amend the Birth Register accordingly and issue a corrected Birth Certificate;



- iv. That consequent upon the rectification of the Birth Register and Birth Certificate, this honourable Court be pleased to direct the Directorate of Immigration Services to rectify the minor's Kenyan Passport by removing the surname "M" presently appearing therein and replacing the same with the surname "Ngotho", being the surname of the biological father Francis Ngotho Maina;
 - v. That costs be in the cause.
2. The application is supported by two affidavits deponed to by the two Applicants.
 3. The return of service sworn on 2nd March, 2026 shows that service was effected upon the Respondents. They, however, have not filed any responses to the application.
 4. The interested party filed an affidavit dated 6th March, 2026.
 5. The proceedings relate to MJM, a minor, born on 2nd June, 2018 and from the prayers in the application, seeks to have the rectification of the entry in his birth certificate.
 6. The Applicants and the interested party state that the 2nd Applicant's name was wrongfully listed as the child's father, instead of the interested party, who is the child's biological father.
 7. They further stated that when the child was born, the Applicants were married, which led to the 2nd Applicant's name being listed in the birth registration as the father, even though he was not. The Applicants stated that the marriage broke down and was later dissolved by a Certificate of Decree Nisi Absolute on 25th June, 2022, hence the need for rectification to reflect the child's accurate biological parentage.
 8. The interested party acknowledges that he was in a relationship with the 1st applicant during the separation and that he is the biological father of the child. He has expressed a desire for his parental details to be entered into the civil registration, although no proof of paternity was provided.

Analysis and determination:

9. This application is treated as unopposed.
10. In the case of *Katiba Institute v Attorney General & 9 others* [2021] KESC 25 (KLR), the Court stated as follows:

“18. Upon noting this court's pronouncement in the decision of *Gideon Konchellah v Julius Lekakeny Ole Sunkuli & 2 others* [2018] eKLR where the Court expressed that: "... [10] Be that as it may, as a court of Law, we have a duty in principle to look at what the application is about and what it seeks. It is not automatic that for any unopposed application, the Court will as a matter of course grant the sought orders. It behooves the Court to be satisfied that prima facie, with no objection, the application is meritorious and the prayers may be granted. The Court is under a duty to look at the application and without making any inferences on facts point out any points of law, such as any jurisdictional impediment, which might render the application a non-starter.”



11. Section 12 of the *Births and Deaths Registration Act* provides for the entry of the father in the register, it states;

“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.”

12. In this case, from the Certificate making decree nisi absolute, the Applicants were married on 26th November, 2011, under the African Christian Marriage and Divorce Act (CAP 151) and the marriage was dissolved on 25th June, 2022.

13. Section 28 of the *Births and Deaths Registration Act* provides for correction of errors in registers as follows;

“(1) The Principal Registrar may, subject to the rules, and on payment of the prescribed fee (which he may in his discretion in any particular case remit), correct any error or omission in any register or index

(2) Corrections shall be made without erasing the original entry, and shall be authenticated by the signature of the Principal Registrar.”

14. The mandate to undertake corrections to the register, as set out in the above section, is conferred upon the 1st respondent. See *JMM v CMM & another* [2025] KEHC 4287 (KLR).

15. There is no evidence that the Applicants previously engaged the 1st Respondent regarding the requested orders before this case was filed.

16. There is also no explanation for why the parties did not first seek recourse from the Registrar of Births and Deaths, especially since they all agree on the changes and there is no dispute. Additionally, there is no evidence to suggest that the Registrar failed in any way that would require Court intervention.

17. The doctrine of exhaustion applies. See *PON v LN & 2 others* [2025] KEHC 2595 (KLR).

18. It is in the best interests of the child that this matter be resolved in accordance with the due process established by law. The parties are directed to exhaust the requisite procedure by approaching the Registrar of Births and Deaths over the rectifications as stipulated in the *Births and Deaths Registration Act*.

19. The matter shall be mentioned in 30 days to confirm the status and/or to take any directions as may be necessary.

20. It is so ordered.

DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 20TH DAY OF APRIL, 2026.

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HON. C. KENDAGOR

JUDGE

In the presence of:

Court Assistant: Beryl

