



**DNK (Suing as the Mother and Next Friend of Friend of Baby MN (Minor))  
v Registrar of Births, Nairobi & another (Miscellaneous Application  
E074 of 2024) [2025] KEHC 1762 (KLR) (Family) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1762 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
MISCELLANEOUS APPLICATION E074 OF 2024  
PM NYAUNDI, J  
FEBRUARY 27, 2025  
IN THE MATTER OF THE CHILDREN ACT, 2022  
IN THE MATTER OF BABY M.N.  
IN THE MATTER OF REMOVAL OF NAME FROM BIRTH CERTIFICATE  
IN THE MATTER OF AN APPLICATION BY**

**BETWEEN**

**DNK ..... APPLICANT  
SUING AS THE MOTHER AND NEXT FRIEND OF FRIEND OF BABY MN  
(MINOR)**

**AND**

**THE REGISTRAR OF BIRTHS, NAIROBI ..... 1<sup>ST</sup> RESPONDENT  
JMK ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Vide Notice of Motion dated 17<sup>th</sup> April 2024 presented under Article 53 of the [Constitution](#) of Kenya and Section s 4 and 11 of the [Children Act](#), the Applicant seeks the following orders-
  1. Spent
  2. That the Court be pleased to delete and/or remove the 2<sup>nd</sup> Respondent’s name appearing as the father in the birth certificate of the child MNM (Minor)



3. That this Honourable Court be pleased to order the 1<sup>st</sup> Respondent to delete and/or remove the name of JMK from the birth certificate of MNM (Minor)
  4. The Respondent to bear the costs of the Application
2. The Application is supported by affidavit of even date sworn on 17<sup>th</sup> April 2024 and further affidavit sworn on 5<sup>th</sup> August 2024. The 1<sup>st</sup> Respondent opposes the Application and has sworn affidavit on 22<sup>nd</sup> May 2024. The 2<sup>nd</sup> Respondent attended Court on 24<sup>th</sup> July 2024 and indicated that he does not oppose the Application.

### **Summary of Pleadings and Submissions**

3. The Applicant is the biological mother of the minor herein. At paragraph 2 of her affidavit she states that the minor was born out of relationship she had with the 2<sup>nd</sup> Respondent. She avers that her efforts to have the 2<sup>nd</sup> Respondent accept responsibility for the minor have been futile.
4. She avers that it is in the interest of the minor to remove the name of the 2<sup>nd</sup> Respondent as the inclusion of the 2<sup>nd</sup> Respondent's name on the minor's birth certificate denies the minor 'the right to identity, recognition and dignity expected from loving parents'.
5. Further the continued presence of the 2<sup>nd</sup> Respondent's name on the birth certificate also has placed extreme hardship to the Applicant and the minor as the applicant needs the consent of the 2<sup>nd</sup> Respondent to secure VISAs and to add the minor to her medical scheme. The 2<sup>nd</sup> Respondent has not been cooperative.
6. The Applicant asks that the minor deserves a name that he will identify with. Finally, it is averred that since the Respondent concedes to the Application it should be allowed.
7. In her submissions the Applicant, delineates 2 issues for determination
  1. Whether the Applicant has met the threshold for the grant of orders sought herein
  2. Whether the Applicant is likely to suffer irreparable harm if the orders are not granted.
8. The Applicant has reiterated the averments in her affidavit but adds the name of the 2<sup>nd</sup> Respondent is improperly on the birth certificate as the inclusion did not comply with Section 12 of the *Births and Deaths Registration Act*, which provides,

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 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 recognised custom.
9. On the 2<sup>nd</sup> issue it is submitted that it is in the Child's best interests that the application be allowed.
10. The Registrar of Births responds to the Application and says the information appearing on the birth certificate was furnished by the Applicant. It can now only be altered on evidence being adduced that the 2<sup>nd</sup> Respondent is not the biological father of the minor.

### **Analysis and Determination**

11. Having regard to the pleadings herein and submissions filed along with the relevant law, I discern the issue for determination is whether it is in the best interests of the minor to remove the name of the 2<sup>nd</sup> Respondent from birth certificate of the minor.



12. As correctly stated by the applicant, Article 53(2) of the *Constitution* of Kenya 2010 and Section 8 of the *Children Act* require that in determining any issue relating to a child, the paramount consideration is whether the contemplated act is in the best interests of the child.
13. By her own admission, the Applicant recognises the 2<sup>nd</sup> Respondent as the biological father of the minor and this is reflected in the birth certificate serial number B0xxxx78 dated 7<sup>th</sup> February 2024 that indicates that the 2<sup>nd</sup> Respondent is the father of the minor.
14. Section 7 of the *Children Act* provides that-
  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. (Emphasis Supplied)
15. This provision of the *Children Act*, mirrors that of Article 7 of the *United Nations Convention on the Rights of the Child* which also safeguards the Child's parent to know and be cared for by his parents. The framing of the provision is indicative that the right is disjunctive and therefore separable. The right to be cared for by parents is distinct albeit stemming from the right to know one's parents.
16. The right to know one's parents is at the heart of one's identity. The inclusion of the 2<sup>nd</sup> Respondent's name on the minor's birth certificate is an accurate representation of his parentage absent any evidence to the contrary. The reason for his removal is that he is reluctant to perform his parental responsibility towards the child.
17. The purpose of the birth certificate is to furnish a record of the birth of an individual including parentage, it is not a merit card. The abdication of parental authority and responsibility does not negate the fact that one is the biological parent of the minor and validate the removal from a birth certificate. It is in the best interests of the Child to have an identity and part of the identity is to know his parentage.
18. By consenting to the removal of his name from the birth certificate the 2<sup>nd</sup> Respondent seeks to relinquish his parental responsibility over the child. Under the law a parent cannot relinquish their parental responsibility except when they give consent to the adoption of the minor. Section 194(1) (b) of the *Children Act* states-

In the case of a parent, the parent understands that the effect of the adoption order is to permanently deprive him or her of his or her parental rights
19. This is because parental responsibility is a right that the Child has, to be taken care of and provided for. The law vests this responsibility on the parent. Even in instances where the parent as in the instant case is an absent father, the law is equipped with the tools to ensure that the Child is not denied their right to identity, parental care and support or that the providing parent is not obstructed by the uncooperative parent.
20. For the reasons above the Application must fail. I therefore dismiss it with no order as to costs.

It is so ordered

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 27<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**NYAUNDI**

**JUDGE**

In the presence of:

Mulandi for the Applicant



