

KENYA / JUDGMENT

# In re Baby JWM (Minor) [2026] KEHC 11777 (KLR)

**[2026] KEHC 11777 (KLR)**

## COURT

High Court

## BEFORE

H Namisi

## CASE / FILE NUMBER

Miscellaneous Application E023 of 2026

Source: new.kenyalaw.org · Research copy typeset by Esheria. Not court-issued or certified.

In re Baby JWM (Minor) (Miscellaneous Application E023 of 2026) [2026] KEHC 11777 (KLR)  
(Family) (30 July 2026) (Ruling)

Neutral citation:

**[2026] KEHC 11777 (KLR)**

Republic of Kenya

In the High Court at Nairobi (Milimani Law Courts)

Family

Miscellaneous Application E023 of 2026

H Namisi, J

July 30, 2026

IN THE MATTER OF BABY J. W. M (MINOR)

AND

IN THE MATTER OF AN APPLICATION FOR CHANGE OF PARTICULARS ON A BIRTH  
CERTIFICATE

Between

AMG

1st Applicant

MNW

2nd Applicant

and

Department of Civil Registration Services

1st Respondent

The Hon The Attorney General

2nd Respondent

Junior Muthama Mukuru

3rd Respondent

## Ruling

1.Before the Court is Notice of Motion dated 21 January 2026, in which the Applicants seek the judicial rectification of the official birth records of a female minor, J.W.M, who was born on 22 March 2024 at [Particulars withheld] Hospital, Nairobi. The Applicants pray a mandatory injunction directing the 1st Respondent to expunge the name of the 3rd Respondent from the minor's Birth Certificate and the corresponding Civil Register. Consequentially, the Applicants seek the insertion of the 1st Applicant's name as the biological father and the alteration of the minor's surname from "Muthama" to "Muchiri" to reflect her true paternal lineage.

2.The jurisdiction of this Court to entertain matters of this nature is original and unlimited, as enshrined in Article 165(3)(b) and (d) of The Constitution, particularly where the determination hinges on the interpretation of constitutional rights—in this instance, the right to the correction of untrue information under Article 35(2) and the enforcement of the rights of a child under Article 53.

3.The 2nd Applicant is the biological mother of the minor. The current Certificate of Birth (Entry No. 61xxx6, Serial Number 40\*87), issued on 9 May 2024 by the Civil Registration Services in Nairobi, designates the 3rd Respondent as the father of the minor. Accordingly, the minor bears the surname "Muthama".

4.The Applicants depose that their romantic relationship experienced a temporary hiatus around the period of the minor's conception and subsequent birth. During this period of estrangement, the 2nd Applicant was in social contact with the 3rd Respondent. It is deposed that when the time came to provide particulars for the statutory notification of birth, the 2nd Applicant, acting under circumstances she describes as inadvertent and erroneous, provided the name of the 3rd Respondent as the father of the minor. The official Register of Births, a copy of which is annexed to the Replying Affidavit of Lucia Mulandi as Exhibit 'LM1', reveals that the 3rd Respondent, holding National Identification Number 13xxxx22, acted as the informant and affixed his signature to certify the correctness of the information on 9 May 2024.

5. Following the birth and subsequent registration, the Applicants reconciled and resumed cohabitation. Upon reflection and evaluation of the circumstances surrounding the conception, both Applicants developed a firm and genuine belief that the 1st Applicant is the true biological father of the minor.

6. Recognizing the grave implications of an inaccurate birth record on the minor's identity, the Applicants proactively approached 1st Respondent seeking an administrative rectification of the minor's Birth Certificate. The 1st Respondent, acting well within its statutory operational guidelines, advised the Applicants that the unilateral administrative expungement of a registered father's name and the substitution thereof cannot be effected arbitrarily upon the mere oral or sworn request of the mother and the putative father. The 1st Respondent unequivocally communicated that such a substantive alteration of the Civil Register requires conclusive scientific proof of paternity—specifically a DNA report—coupled with a binding order of the Court.

7. Further complicating the administrative landscape, the 3rd Respondent's current whereabouts are entirely unknown to the Applicants, thereby rendering any prospect of a consensual administrative resolution or a joint application for rectification practically impossible. Faced with this procedural impasse, the Applicants instituted these proceedings to seek the compulsory intervention of this Court.

8. The Applicants' case is anchored fundamentally on the constitutional protections afforded to children. They contend that the continued presence of incorrect and misleading information on the minor's Birth Certificate is highly prejudicial. They submit that a birth certificate is a critical foundational document that dictates a minor's identity, lineage, and heritage, and that an inaccurate record violates the minor's constitutional right to accurate personal information as enshrined in Article 35(2) of The Constitution.

9. The Applicants argue that the erroneous registration was not born of malice but of the confusing circumstances surrounding their temporary separation. They assert that they are pursuing this application in good faith, driven solely by a child-centered desire to safeguard the long-term welfare and true identity of the minor, thereby fulfilling the constitutional mandate under Article 53(2) which dictates that a child's best interests are of paramount importance. They further rely on the scientific certainty provided by the DNA report from the Government Chemist, which they submit completely neutralizes the presumption of paternity previously established by the 3rd Respondent's signature on the birth notification form.

10. The 1st Respondent and the 2nd Respondent entered an appearance and filed Replying Affidavits sworn by Nafisa Mwavita Abdulkadir and Lucia Mulandi, both Senior Civil Registration Officers.

11.The Respondents rely on the provisions of the Births and Deaths Registration Act (Cap 149), specifically Section 10, which places a mandatory obligation and statutory responsibility upon any person notifying a birth to make genuine and truthful declarations regarding the prescribed particulars.

12.The Respondents submit that in discharging its statutory duties, the registry relies on the doctrine of utmost good faith from informants. In the present case, the birth was registered within the mandatory six-month period pursuant to Section 8 of the Act. The 3rd Respondent personally acted as the informant, providing his National Identity Card and affixing his signature to certify the correctness of the information. Ms. Abdulkadir, in her Affidavit, deposes that under Section 22 of the Act, wilfully providing false information for the purpose of registration is a criminal offense punishable by a fine or imprisonment.

13.The Respondents further contend that Section 28 provides for the "correction of errors," which is traditionally interpreted by the registry to mean clerical or typographical mistakes, rather than the substantive alteration of factual attestations made at the time of registration. Therefore, the Respondents argue that the burden of proving beyond any reasonable doubt that the 3rd Respondent is not the biological father rests squarely on the Applicants.

14.Crucially, both Ms. Abdulkadir and Ms. Mulandi depose that the 1st Respondent is entirely willing to remove the 3rd Respondent's name, insert the 1st Applicant's name, and rectify the minor's surname, provided that this Honourable Court issues a definitive order to that effect after verifying the DNA evidence. This establishes that the Respondents acknowledge the supremacy of judicial oversight in matters involving the substantive alteration of the civil register.

15.The 3rd Respondent neither entered an appearance nor filed any Replying Affidavit or Grounds of Opposition to challenge the application, despite the Applicants' assertions on record regarding the execution of electronic service upon him.

## Analysis & Determination

16.Before this Court can delve into the substantive merits of paternity and the rectification of state registers, it must first satisfy itself that the procedural rights of all parties, particularly the 3rd Respondent whose name currently occupies the space of the father on the Birth Certificate, have been respected. The right to a fair hearing, which incorporates the right to be notified of proceedings instituted against oneself, is a non-derogable cornerstone of natural justice protected under Article 50 of the Constitution.

17.The Applicants state that the 3rd Respondent's physical whereabouts are unknown. Consequently, to demonstrate service, the Applicants rely on the Affidavit of Service sworn by Mr. Festus Morang'a, Advocate, on 24 February 2026. The Advocate deposes that on 3 February 2026 at 10:14 am, he effected service by sending a copy of the pleadings and court directions to the 3rd Respondent via his email address: mut\*\*\*\*61@gmail.com. Annexed to the affidavit as Exhibit F.M-3 is a printout of the sent email, complete with a disclaimer regarding electronic service pursuant to Order 5 Rule 22B of the Civil Procedure Rules.

18.The legal architecture governing service by electronic means in Kenya was revolutionized by the Civil Procedure (Amendment) Rules, 2020, which sought to align litigation practice with contemporary technological realities. Specifically, Order 5 Rule 22B(1) provides that summons sent by Electronic Mail Service shall be sent to the defendant's last confirmed and used e-mail address. However, the critical caveat lies in Order 5 Rule 22B(2), which explicitly states that service shall be deemed to have been effected only when the sender receives a delivery receipt.

19.The jurisprudence surrounding this specific requirement has recently been elucidated by the High Court in the case of BOD County Referral Hospital Kitale & another v DN (Civil Appeal E043 of 2023) KEHC 5344 (KLR). In that appellate decision, the Court drew a firm, technically precise distinction between the mere dispatch of an email and its actual delivery, emphatically noting that sent is not the same as delivered. The Court held that an affidavit of service lacking an annexed automated email delivery receipt fails to demonstrate that the email actually reached the recipient's mailbox, thereby rendering the proof of service deficient under Order 5 Rule 22B.

20.An examination of Mr. Morang'a's Affidavit of Service in the present matter reveals that it annexes a printout of the sent email from his outbox, but it conspicuously lacks a system-generated delivery receipt confirming successful routing to the Google mail servers.

21.On a strict, formalistic construction of Order 5 Rule 22B, the service upon the 3rd Respondent is technically defective. In ordinary adversarial civil litigation, this defect would necessitate striking out the affidavit of service and directing the Applicants to effect proper service—perhaps through substituted means such as an advertisement in a newspaper with national circulation.

22.However, a court of law does not operate in a vacuum of rigid procedural technicality, especially when it sits to adjudicate matters deeply intertwined with the welfare, identity, and constitutional rights of a minor child. Article 159(2)(d) of The Constitution commands this Court to administer justice without undue regard to procedural technicalities. Furthermore, Sections 1A and 1B of the Civil Procedure Act compel the Court to facilitate the just, expeditious, proportionate, and affordable resolution of disputes.

23.The Court takes judicial notice of the principle established in *Gideon Konchellah v Julius Lekakeny Ole Sunkuli & 2 others* eKLR, where it was held that even in unopposed applications, a court of law has a duty in principle to look at what the application is about and evaluate its merits; it is not automatic that an unopposed application will be granted merely because the respondent is absent. The inverse is also true: a technically defective service on an absent respondent should not automatically derail an application if the substantive evidence before the court—in this case, infallible genetic science—renders the absent party's input functionally moot.

24.In *JMM v CMM & another* KEHC 4287 (KLR), a matter bearing striking similarities to the present dispute regarding the deletion of a father's name from a birth certificate, the Court stressed that service of an application is an integral part of legal proceedings that cannot be overlooked. However, the defining distinguishing factor in the present Application is the nature of the evidence and the impossibility of alternative service. The 3rd Respondent's whereabouts are completely unknown. Compelling the Applicants to spend substantial resources on a

newspaper advertisement for a man whose biological exclusion is already established by DNA would be a draconian triumph of form over substance, subjecting the minor to prolonged legal uncertainty contrary to the overriding objective.

25. Therefore, while I strictly caution legal practitioners to adhere to the delivery receipt requirements elaborated in BOD County case (*supra*), I exercise my inherent jurisdiction under Article 159 to deem the electronic service upon the 3rd Respondent as sufficient for the limited purposes of proceeding with this paternity and rectification application. No prejudice is suffered by the 3rd Respondent in terminating a legal parental status that is scientifically proven to be a biological impossibility.

26. The fulcrum upon which the Applicants' prayers rest is the scientific displacement of the 3rd Respondent's documented paternity. The Court directed, and the Applicants voluntarily complied, that the parties subject themselves to DNA testing.

27. The Court has meticulously examined the Report of Government Analyst bearing Reference N51/2026, dated 18 March 2026. The report is authored by Pamela Khamala Okello (MSc.), a Government Analyst at the Government Chemist's Department, and is properly admitted into evidence pursuant to Section 77(1) of the Evidence Act.

28. The Government Analyst concludes her report by stating: "Based on the DNA profiles generated from the above listed samples, there are 99.99+% more chances that Albert Muchiri Gakuru is the biological father to Jasmine Wanjiru Muthama, Maurine Nyagichuhi Wanjau's child."

29. In modern jurisprudence, such absolute scientific certainty comprehensively and fatally displaces any circumstantial, administrative, or documentary presumption of paternity. The DNA test provides the Court with the empirical, biological truth required to traverse the documentary errors made at the time of birth registration. The Court, therefore, adopts the findings of the Government Analyst as conclusive proof of fact.

30. I find and hold that the 1st Applicant is unequivocally the biological father of the minor. Concomitantly, the 3rd Respondent is scientifically excluded from biological paternity, rendering his status on the Birth Certificate a biological nullity.

31. Having established the biological truth, the Court must now navigate the statutory mechanisms for rectifying the civil register. The 1st Respondent correctly notes that under Section 10 of the Births and Deaths Registration Act, the duty to provide genuine particulars lies solely with the informant. Once entered into the register, Section 28 governs the "correction of errors". Administrative officers have traditionally interpreted Section 28 strictly, viewing it as a mechanism for correcting minor typographical or clerical mistakes, rather than for the substantive alteration of parentage after the fact. This administrative caution is understandable; the Civil Registry cannot operate as a tribunal of fact to evaluate DNA evidence or investigate claims of fraud without judicial oversight.

32. However, the provisions of the Act must now be read, interpreted, and applied through the transformative, rights-enhancing prism of The Constitution. Article 35(1) guarantees the right to access information. More pertinently for the present application, Article 35(2) establishes a robust, justiciable right: "Every person has the right to the correction or deletion of untrue or misleading information that affects the person".

33. A Birth Certificate is not merely an administrative receipt; it is the foundational document of human identity. It serves as the gateway to citizenship under Article 14, education, and legal recognition within the State. When a birth certificate reflects a non-biological individual as a parent, it constitutes "untrue and misleading information" of the highest magnitude.

34. In *JMM v CMM & another* KEHC 4287 (KLR) the Court specifically affirmed that Article 35(2) empowers the Court to order the deletion or removal of a wrongly ascribed father's name from Birth Certificates to cure untrue records. Similarly, in *FOA v RAO and 2 others* KEHC 6844 (KLR), the Court held that retaining a non-biological father's name on a birth certificate contrary to biological reality renders the document misleading and offensive to the constitutional threshold of accurate data. The Court unequivocally ordered the removal of the non-biological father's name, cementing the principle that the sanctity of the Civil Register is derived from its factual accuracy, not its immutability.

35. In *RJKK & another v Registrar of Births and Deaths & another* KEHC 5125 (KLR), the Court explicitly ordered the rectification of a birth certificate entry by removing one individual's name as father and inserting the biological father's name based on subsequent factual findings.

36. The Court, therefore, finds that, armed with conclusive DNA evidence, it has the unfettered constitutional jurisdiction under Article 35(2) to order the expungement of the 3rd Respondent's name from the minor's birth records to cure the untrue and misleading information.

37. The final question before this Court is whether it is in the best interests of the child to carry the name and documented lineage of a man who is not her biological father. The answer is an unequivocal no. To subject a child to a lifetime of bearing the name of a man who has no biological connection to her, while her true biological father is present, willing, and proven by science, is a severe affront to the child's dignity. It disrupts the child's accurate sense of lineage, heritage, and identity. As the Court noted in *FOA v RAO*, a child possesses an inherent psychological right to know their biological origin, and the accurate documentation of this origin protects the child from future psychosocial turmoil.

38. Furthermore, an inaccurate Birth Certificate creates hazardous legal complications. It improperly assigns statutory parental responsibility to a stranger while legally alienating the true biological father. It creates chaotic implications regarding inheritance under the Law of Succession Act, where a child's right to inherit is deeply tied to legally recognized parentage. It also creates complexities in matters of custody, maintenance, and international travel, where parentage must be strictly proven.

39. It is undeniable that the 2nd Applicant made a grave error by providing the 3rd Respondent's name during a period of relational estrangement. While the law does not take kindly to the provision of false information to a statutory body, the punitive consequences of that error must never be visited upon the innocent minor. The child's right to an authentic identity vastly supersedes the mother's prior administrative indiscretion.

40. The 1st Applicant has stepped forward, submitted himself to DNA testing, and actively seeks to have his biological parentage recognized by the State. He wishes to assume his equal parental responsibility under Section 32 of the Children Act 2022. Under Section 14 of the Births and Deaths Registration Act, which provides for the change of a name of a child after registration, and in light of the DNA verification, there is no legal impediment to changing the minor's surname to reflect her true paternal lineage. Altering the surname from "Muthama" to "Muchiri" is the logical and necessary consequence of rectifying the paternity details, and it perfectly aligns with the child's best interests.

41. In conclusion, it is the determination of this Court that the Notice of Motion dated 21 January 2026 is fully merited.

42. Accordingly, the Court issues the following orders: i. The 1st Respondent is hereby directed to forthwith delete, remove, and expunge the name of the 3rd Respondent, from the Register of Births and from the Certificate of Birth (Entry No. 61xxx6, Serial Number 40\*87) in respect of the minor. ii. The 1st Respondent is hereby directed to insert and register the name of the 1st Applicant as the father of the minor in the Register of Birth. iii. The 1st Respondent is hereby directed to rectify, amend, and alter the minor's surname by deleting the name "MUTHAMA" and substituting it with the 1st Applicant's name "MUCHIRI", such that the minor's legal name shall henceforth accurately and officially read as JWM. iv. The 1st Respondent shall issue a fresh, amended Certificate of Birth to the Applicants reflecting the correct particulars. v. Each party shall bear their own costs.

DATED AND DELIVERED AT NAIROBI THIS 30 DAY OF JULY 2026  
HELENE R. NAMISI  
JUDGE OF THE HIGH COURT  
Delivered on virtual platform in the presence of:  
For the Applicants: Ms Wambui h/b Moranga  
For the 1 & 2 Respondents: N/A  
For the 3rd Respondent: N/A  
Court Assistant: Lucy Mwangi

## Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://new.kenyalaw.org/akn/ke/judgment/kehc/2026/11777/eng@2026-07-30>

CASE PAGE <https://chat.esheria.ai/case-law/kenya/Paternitydetermination-high-court-2026--9c6687bcba9da5276a6a14d0>

Prepared on 26 October 2026 · Esheria