



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC. CIVIL APPLICATION NO. 108 OF 2018

IN THE MATTER OF THE CHILDREN'S ACT CAP 248

AND

IN THE MATTER OF AN APPLICATION ON BEHALF OF MINORS B W K AND D G K

J I M W.....APPLICANT

VERSUS

J K G.....RESPONDENT

RULING

1. The Applicant, J I M W has brought an application under Certificate of Urgency. By way of Notice of Motion dated 30th July, 2018 under **sections 13, 79, 82 and 105** of the **Children's Act**. The application seeks for orders that the Applicant be appointed as the Guardian/Legal Representative of the minor children **B W K** and **D G K**, to take them into her custody and care and to provide for their basic needs pending their mother's treatment and release from the [particulars withheld] centre.
2. The application is premised on the grounds that the Applicant is an aunt to the minors who are aged 13 and 10 years respectively. The Applicant had admitted the children to a boarding school and unless the orders are granted, the children would be stranded once the schools close on 3rd August, 2018 since both of their biological parents are unable to look after them.
3. The application is supported by the Applicant's affidavit sworn on 30th July, 2018. In the affidavit, the Applicant avers that the biological mother of the two minors is currently under the care of the Retreat Rehabilitation Centre – [particulars withheld], where she was admitted on 26th July, 2018 for 90 days. She is suffering from alcohol abuse and due to her medical condition, she is under 24 hour nursing care and is unable to take care of the minors who are in school.
4. In the supporting affidavit, the Applicant also deposes that the biological mother cannot currently manage her own affairs, or make decisions regarding the children hence the application. The biological parents of the minors are said to be divorced and their father has given up parental responsibility towards the children.
5. Learned Counsel Mr. Museve appearing for the Applicant submitted that the father of the minors filed a Children's matter in Court soon after the divorce. He however withdrew the matter by a letter dated 9th January, 2012 through his lawyer and since then he has neither visited nor maintained the minors in any way whatsoever. Counsel further submitted that this Certificate had been served upon the biological father who declined service. I note from the record that the affidavit of service indicates that he was served personally but that he refused to sign the return of service.
6. The urgency of the matter comes about from the fact that the two minors are in a boarding school and are due to close school tomorrow, the 3rd of July, 2018. The minors will not be released to a person other than their mother who is the care giver registered with the school, but who is now admitted at the Rehabilitation centre.
7. Annexed to the supporting affidavit are the birth certificates of the minors and their proforma invoices for school fees from [particulars withheld] School. Also annexed are the Decree Nisi dated 22nd June, 2012 in the divorce matter and the father's letter dated 9th January, 2012 addressed to the Executive Officer Children's Court Milimani, in which he withdrew the Children's case against their biological mother.
8. The foregoing being the matrix of this case, I bear in mind that the application is not contested and more importantly, that it concerns the well-being of children. In law, in any matter concerning a child, the best interests of a child are paramount. **Article 53 (2)** of the **Constitution** provides the guiding principle on this question as follows:

“A child’s best interests are of paramount importance in every matter concerning the child.”

The other pertinent law on the best interest of a child is the **Children Act No. 8 of 2001** and in particular **Section 4(3)** thereof.

9. After careful consideration of the grounds of the application and all the attendant circumstances of the case, I am satisfied that the prayer sought in the application dated 30th July, 2018 is merited. Consequently, the application is granted with no orders as to costs.

SIGNED DATED and DELIVERED in open court this 2nd day of August 2018.

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L. A. ACHODE

JUDGE