



**In re KWW (Minor) (Family Miscellaneous Application E126 of 2024)  
[2025] KEHC 3335 (KLR) (Family) (20 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3335 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
FAMILY MISCELLANEOUS APPLICATION E126 OF 2024  
HK CHEMITEI, J  
MARCH 20, 2025  
IN THE MATTER OF SOLE CUSTODY OF KIWW [MINOR]**

**IN THE MATTER OF**

**BEWM ..... APPLICANT**

**JUDGMENT**

1. This judgment relates to the ex – parte application dated 21<sup>st</sup> June, 2024 filed by the Applicant, BEWM, seeking for orders that:
  - a. The Applicant be granted sole legal and actual custody, care and control of KIWW , born on 4<sup>th</sup> September, 2013.
  - b. The Applicant be granted leave to relocate the minor out of the court’s jurisdiction.
  - c. Such further or other orders be made as the court deems fit and just in the circumstances.
2. The application is supported by affidavit sworn by BEWM on 21<sup>st</sup> June, 2024. She avers inter alia that she is the minor’s biological mother whose birth certificate does not bear her father’s name. She has solely provided for the minor since birth without any involvement of her father. Her mother, EWN, is the minor’s caregiver in Kenya while she lives in Australia. She wishes to relocate the minor to Australia to live with her and to enable her provide her with a stable and loving environment.
3. The application is unopposed and there are no written submissions filed by both parties.

**ANALYSIS AND DETERMINATION :**

4. I have carefully considered the application and address it as follows:



5. 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.”

6. In *OGM v FG & another* [2020] eKLR, the court stated as follows: “...23. That similarly under Article 7 of 1989, Conventions of the right of the child, the child shall have a right to know, live and to be cared for by his or her parents. Article 19 of African Charter, on the rights and welfare of the child, stipulates that: “Every child is entitled to parental care and protection and shall whenever possible reside with his/her parents.”... 28. Actual custody, care and control of the minor are defined under Section 81 of the *Children Act*. “Custody with respect to a child means so much of the parental rights and duties as relates to the possession of the child.” 29. Care and control means actual possession of a child whether or not that possession is shared with one or more persons... Article 53(2) of *the Constitution* provides... “A Child’s best interests are of paramount importance in every matter concerning the child.”... The *Children Act* has buttressed the Constitutional provision. At Section 4(1) it provides: “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”- Convention on the Rights of the child and the African Charter on the Rights of the child have emphasized the Centrality of the best interest of the child. There is no definition of the best interest of the child. The best interest of the child is determined on the circumstances of the case as they specifically relate to the child. The focus must be on the child and what is best for him. Consideration will be guided by the basic rights of the child which are provided under *the Constitution, Children Act* and International Instrument which have been ratified under; Article – 2 (5) of *the Constitution*: “The general rules of international law shall form part of the law of Kenya.”... Section 6 (1) of the Act provides that; “A child has a right to live with and to be cared for by his (or her) parents.”... Article 7 of the 1989 Conventions on the rights of the child states that a child shall have a right to live with and be cared for by his or her parents. This is also echoed at Article 19 of the African Charter on Rights and Welfare of the Child which states that - “Every child is entitled to parental care and protection and shall whenever possible reside with his or her parents”- Parental responsibility attaches to the right of the child as it is the parent who has the responsibility to ensure that the needs of the child are catered for. The law provides that it is the parent of a child who has parental responsibility, The child has a right to parental responsibility and it is in the best interest of the child that he brought up and cared for by his or her parent. This right can only be denied if is proved with cogent evidence and valid grounds that the parent is not suitable or is incapable of taking care of the child. Section 76 (1) of the *Children Act* provides: “Subject to Section 4 where a court is considering whether or not to make one or more orders under this Act with respect to a child it shall not make the order or any other orders unless it considers that doing so would be more beneficial to the welfare of the child than making no order at all.”



7. In light of the foregoing, and owing to the facts that grand parents are not parents to minors and also that the minor's father has never been involved in her life since birth, there is therefore merit in the application and the same is hereby allowed as prayed.

8. Costs in the cause.

**DATED SIGNED AND DELIVERED VIA VIDEO LINK THIS 20<sup>TH</sup> DAY OF MARCH, 2025.**

**H K CHEMITEI**

**JUDGE**

