



REPUBLIC OF KENYA



**In re VJL (Minor) (Adoption Cause E001 of 2025)
[2025] KEHC 8619 (KLR) (20 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8619 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
ADOPTION CAUSE E001 OF 2025
RN NYAKUNDI, J
JUNE 20, 2025
IN THE MATTER OF SECTION 102 OF THE CHILDREN'S ACT 2022
AND
IN THE MATTER OF APPLICATION FOR GUARDIANSHIP TO VJL**

JUDGMENT

1. The applicants approached this court vide ex-parte originating summons dated 3rd February, 2025 seeking reliefs as follows:
 - a. That RKE and TLA be appointed as guardians in respect of the minor VJL.
 - b. That the courts do issue such further orders as may deem fit in the interest of the child
2. The Application is premised on the grounds set out therein and the statements of the applicants annexed thereto.
3. The applicants indicated that they are relatives to the child and wish the court to grant guardianship to them. That they have lived with the minor for more than 3 years and all the relevant consents have been obtained. They deposed that they are able and willing to offer the minor a home and an opportunity to live a normal family life in comfortable surroundings and that the minor is niece to one of the applicants.
4. Through this court's direction, the Directorate of Children did a background check on the adoption process and the suitability of the applicants for guardianship and came up with a report dated 23rd May, 2025 which highlighted that the family has got all it takes for the child to be incorporated into them. That as for the child, she is fit for adoption to the applicants and this has been buttressed by the fact that the biological parents have given a node to the process to be undertaken without any objection. The children's department recommended that the applicants be given orders adoption of the child named above.



Determination

5. I have carefully considered the petition before the court and its supporting documents and address them as below. Section 76 of the [Children's Act](#) provides the general principles applicable in regard to proceedings in Children's courts. Section 76 (3) of the [Children's Act](#) is critical in that it requires as follows:

- “(3) Where the court is considering whether or not to make an order with regard to a child, it shall have particular regard to the following matters-
- a) the ascertainable feelings and wishes of the child concerned with reference to the child's age and understanding.
 - b) the child's physical, emotional and educational needs and in particular, where the child has a disability, the ability of any person or institution to provide any special care or medical attention that may be required for the child.
 - c) the likely effect on the child of any change in circumstances.
 - d) the child's age, sex, religion personality and cultural background.
 - e) any harm the child may have suffered or is at risk of suffering.
 - f) the ability of the parent or any other person in relation to whom the court considers the question to be relevant, to provide for and care for the child
 - g)
 - h)
 - i) the range of powers available to the court under this Act.”

6. When exercising jurisdiction to promote a child's best interests, courts have a constitutional duty to uphold Articles 27, 47, 48, 49, 50, 51, and 53 of the [Constitution](#). The law's approach to children's rights, as defined in the [Children's Act](#), was articulated by the court in *J v C* (1970) AC 668, which stated:

“When all relevant fact, relationship, claims and wishes of parents, risks choices and other circumstances are taken into account and weighted, the course to be followed will be that which is most in the interest of the child...”

7. The remedy sought by the applicant falls within the scope of the decision in the Ugandan case of *David Twesigye (an infant)* HCMA No. 0004 of 2008 (pages 4-6), where the court stated:

“While the primary right of a child is to grow up under the tutelage of his or her parents, or parent, for the obvious reasons of emotional attachment, if it is shown to the satisfaction of a competent authority, and in this case the court that vesting legal guardianship of the child in the applicants, it would serve the best interest of the child, then it would be proper for this court to make an order removing such child from the parent. Court has to weigh



the emotional loss of staying with one's parents against the opportunities that would come with the relocation away from the hands of the parents....”

8. The best interests of the child is the highest standard for awarding child custody, guardianship, and adoption in the Republic of Kenya. It is that standard which places constitutional imperatives on the best interest and welfare of the child as a central focus in every decision made impacting on any such rights as a foundation to further their interests. The courts must determine the best interest of the child based on a case-by-case basis and the answer to every question is individualized. What is sometimes experienced by Judges is how hard it can be to predict the outcome of the best interest in child custody or guardianship matters. I am mindful specifically of cases of this nature where courts must demonstrate in their decisions compliance with the constitution and legislation governing the doctrine of the best interest. It requires deep enquiry concerning the best interests of children taking into account the specific and unique circumstances of each child to fulfill the spirit of the law on the best interest and welfare of the child.
9. In the present case, I have carefully examined the evidence before me. VJL, born on 9th January 2020, is now approximately 5 years old. The applicants, RKE and TLA, have demonstrated their commitment to the child's welfare by caring for her for more than three years. During this period, they have provided for all her needs including education, medical care, and general welfare.
10. The biological parents, VJC and RK, have both provided unequivocal consent to this guardianship application. In their respective affidavits, they acknowledge that due to financial constraints, they have been unable to provide adequate care for their daughter. Their decision to consent to guardianship is motivated by what they perceive to be in the best interests of their child, a decision that demonstrates parental responsibility and love.
11. The Directorate of Children's report dated 23rd May 2025 is also instructive. After conducting thorough background checks and home visits, the children's department found that the applicants possess all the necessary qualities and resources to provide proper guardianship. The report specifically notes that the child is fit for adoption to the applicants and recommends that guardianship be granted.
12. From the foregoing, I am persuaded by the evidential material placed before me that the continuity of the best interests of VJL is better secured in the guardianship of the applicants. The biological parents retain visitation rights to accord them continued relationship with the minor, founded on the principle that the child requires a continuous relationship with both parents where possible.
13. The following orders shall therefore abide:
 - a. That pursuant to Section 122 of the Children's Act 2022, the Court hereby appoints RKE and TLA as joint guardians of VJL in respect of her person and estate, which guardianship shall last until her attainment of the age of 18 years, unless earlier revoked or later lawfully extended by the Court in accordance with the law.
 - b. That the applicants are authorized to make all decisions concerning the minor's education, medical care, and general welfare as her legal guardians.
 - c. That the biological parents, VJC and RK, shall retain reasonable access and visitation rights to maintain their relationship with the minor, subject to the best interests of the child.
 - d. No orders as to costs.
14. Orders accordingly.

DATED AND DELIVERED AT ELDORET THIS 20TH DAY OF JUNE 2025



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R. NYAKUNDI
JUDGE

