



**BF v PC & 2 others (Adoption Cause E002 of 2023)
[2024] KEHC 5652 (KLR) (22 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 5652 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
ADOPTION CAUSE E002 OF 2023**

**F GIKONYO, J
MAY 22, 2024**

BETWEEN

BF APPLICANT

AND

PC 1ST SUBJECT

BKB 2ND SUBJECT

BB 3RD SUBJECT

JUDGMENT

Extending parental responsibility beyond 18 years

1. The originating summons dated 19/10/2023 is seeking the following orders;
 - i. Spent.
 - ii. That this Honourable court be pleased to appoint the applicant herein Bett Felix as legal guardian in respect of the minors herein Peninah Chebet, Bernard Kiplangat Bett, and Bonivas Kiprotich Bett.
 - iii. That upon grant of the order (ii) above, the applicant herein be known as the parent to the minors herein Peninah Chebet, Bernard Kiplangat Bett, and Bonivas Kiprotich Bett.
 - iv. That the court do make any other or further orders as it may be necessary in the interest of the minor.
 - v. That costs of this application be provided for.
2. The application is premised on order 37 of the civil procedure rules, sections 122(2) and 125 of the [Children's Act](#), and sections 1, 3, and 3A of the [Civil Procedure Act](#).



3. The application is based on the grounds set out on the face of the application and the supporting affidavit of Bett Felix sworn on 19/10/2023.
4. The applicant averred that the minors herein are the children of the late KAK and NC. The parents of the minors are deceased with their mother having passed on 10/12/2007 and their father recently passed on 22/08/2023.
5. The applicant contends that the minors have been under the care of the applicant herein since the demise of both parents.
6. The applicant is willing and ready to assume parental responsibility over the said minors and understands what the same entails.
7. From the certificate of urgency, counsel for the applicant advanced the reasons that
 - i. The minor's parents are deceased.
 - ii. the applicant lacks the requisite legal capacity to adequately cater to the minors by virtue of not being their legal guardian.
 - iii. The minors are still of school-going age and there are pending payments the applicant wishes to pursue on behalf of the minors but he has been told he can only secure the same after obtaining legal guardianship.

Analysis And Determination.

8. Borne out of the Originating Summons, the supporting affidavit, and the annexures thereto, issues for determination are;
 - i) Whether the subjects herein are minors.
 - ii) If not, whether there are special circumstances to extend parental responsibility beyond the 18th birthday of the subjects.
9. The applicant orally stated that he is a brother to the 'minors' herein.
10. The Originating Summons is brought under sections 122(2) and 125 of the [Children Act](#)
11. Section 122(2) of the [Children Act](#) provides that;

122. (2)A guardian may be appointed on application in the prescribed form in respect of any child who is resident in Kenya whether or not the child was born in Kenya or is a Kenyan Citizen.
12. Section 125 of the [Children Act](#) provides that;

125.

 - (1) In addition to the powers of the Court to appoint a guardian under section 122, the Court may appoint a guardian on application by any person in the prescribed form in any of the following circumstances—
 - (a) where the child's parents are deceased or cannot; be found, and the child has no guardian or other person having parental responsibility over the child; or
 - (b) where the child is one to whom section 121 applies.
 - (2) The Chief Justice shall make rules to guide the procedures for guardianship.



13. The case is styled as being for appointment of a guardian by the court to assume parental responsibility upon the death of both parents of the child.
14. The applicant wishes to have a guardianship order with respect to his three siblings; Peninah, Benard, and Bonivas who are 19 ½ years, 23 years, and 18 years respectively.
15. From the certificates of birth produced the subjects are not minors. They are all of majority age.
16. The provisions cited by the applicant apply to situations where the subjects are minors. The relevant provision where parental responsibility is sought upon persons of majority age should be section 35 of the *Children Act*.
17. The applicant has stated that the subjects are school-going but has not provided any evidence to that effect.
18. Curiously, the applicant also stated that, there are pending payments he wishes to pursue on behalf of the minors but he has been told he can only secure the payment after obtaining legal guardianship. Instinctive feeling is shouting to the court that, the major reason for applying is pursuit of the pending payments. The subjects are adults and have capacity to pursue the payments themselves.
19. The applicant did not state that he needed extension of parental responsibility beyond the 18th birthday of the subjects. He did not provide evidence that they are school-going or any other acceptable reason to show that the subjects require parental care and responsibility beyond the age of majority.
20. In the upshot therefore, the application for guardianship is disallowed.
21. Orders accordingly.

DATED, SIGNED, AND DELIVERED AT NAROK THROUGH TEAMS APPLICATION, THIS 22ND DAY OF MAY 2024.

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**HON. F. GIKONYO M.
JUDGE**

In the presence of: -

Mugumya for Applicant - Present

Mr. Otolo - C/A

