



**In re Appointment of Legal Guardian of SKN (Minor) (Adoption Cause E001 of 2024) [2024] KEHC 5816 (KLR) (23 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5816 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
ADOPTION CAUSE E001 OF 2024**

**JK SERGON, J**

**MAY 23, 2024**

**IN THE MATTER OF THE CHILDREN ACT (NO. 29 OF 2022)**

**AND**

**IN THE MATTER OF APPOINTMENT OF LEGAL GUARDIAN OF S.K.N (MINOR)**

**IN THE MATTER OF**

**LC ..... APPLICANT**

**RULING**

1. Before the court is the originating summons dated 12th March, 2024 by which the applicant seeks the following orders;
  - i. Spent
  - ii. That an order do issue granting the Applicant L.C the legal custody, care and control of S.K.N the minor herein.
  - iii. That the applicant L.C be granted leave to relocate the minor to the United States of America or any other country for that matter and that the minor be under her custody, care, protection and control.
  - iv. That the court does issue any other order that this court may deem just and expedient to grant.
2. The application is supported by grounds on the face of it and a supporting affidavit sworn by L.C the Applicant herein.
3. The applicant avers that she is a Kenyan citizen by birth and the aunt of the minor herein.
4. The applicant avers that the minor herein is her nephew by virtue of him being the son of her late sister one Edith Chepngeno Korir who passed away on 19th November, 2016, she annexed a copy of the death certificate. The applicant further avers that during her lifetime, her late sister was blessed



with one son S.K.N the minor herein, who was born on 18th January, 2010, she annexed a copy of the minor's birth certificate.

5. The applicant avers that the minor has been under her care and support since the demise of his mother who was not married at the time of her demise. The applicant further avers that she continues to take care of the said minor a fact which is well known by the local administration at their area of residence as demonstrated in the area chief's letter dated 4th March, 2024, she annexed a copy of the chief's letter.
6. The applicant avers that she is in the process of relocating abroad with her family (husband and children), she has secured employment in the United States of America.
7. The applicant avers that she is financially capable of taking care of all the financial obligations and necessities of the minor while abroad.
8. The applicant was therefore seeking a court order granting her custody of the minor and to allow her to relocate with him so as to ensure that the minor continues to receive the best care and protection.
9. The applicant avers that the other family members were not opposed to the application for custody, which application, is in the best interest of the minor herein.
10. The minor's maternal grandfather J.K filed an affidavit in support of the application for orders of custody.
11. He avers that at the time of the demise of the minor's mother, she was not married and she lived with them at their home in Samtet in Kapsoit, Ainamoi Constituency within Kericho County. He further avers that upon her demise, the family collectively took up responsibility to ensure that her son the minor herein is brought up well.
12. He avers that with time the family left the responsibility of the upbringing of the minor to the applicant herein, a responsibility which she has and continues to do well and therefore the family has no objection to this Court granting her sole custody of the minor herein. The other family members gave their unconditional consent to have the applicant granted sole legal custody of the minor and permission to relocate with the minor abroad.
13. He avers that he swore the instant affidavit freely and voluntarily in order to give consent for the applicant to be granted sole legal and actual custody of the minor. He further avers that it is in the best interest of the minor herein to be allowed to relocate with the applicant.
14. I have considered the originating summons filed herein dated 12th March, 2024 and the affidavits filed in support of the application for legal custody. The sole issue for determination is whether to grant legal custody to the applicant. The answer is in the affirmative, I find that the applicant is a suitable person to take charge of the child and safeguard his interests and that granting the orders for custody will serve the best interests of the child.
15. In deciding upon any matter involving a child, courts are obliged to give priority to the best interests of the said child, section 8 (1) of the [Children Act](#) No. 29 of 2022 provides as follows;  

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies—

(a) the best interests of the child shall be the primary consideration;”
16. I hereby allow the originating summons dated 12th March, 2024 in the following terms;



- i. That L.C (the applicant herein) be and is hereby granted legal and actual custody of the S.K.N (the minor herein).
- ii. That the applicant be and is hereby granted leave to relocate the minor to the United States of America or any other country for that matter and that the minor be under her custody, care, protection and control.

**DATED, SIGNED AND DELIVERED AT KERICHO THIS 23RD DAY OF MAY, 2024.**

.....

**J.K. SERGON**

**JUDGE**

In the Presence of:-

C/Assistant – Rutoh

Miss Wangui Ndungu holding brief Yegon for Applicant

