

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 49 OF 2017

REPUBLIC.....PROSECUTOR

VERSUS

MM.....ACCUSED

RE: BABY EN

RULING

Baby EN aged sixteen (16) months is the son of MM the accused herein. M is charged with murder and is currently remanded in custody at Langata Women's Prison pending the hearing and determination of this case. To date, nine (9) witnesses have testified for the prosecution. While this matter was on-going, Mrs. Omungala, learned counsel for the accused applied on 27th March 2019 to have baby EM released to his grandparents SW and JN. No reasons were advanced for this application but in the report from the Children's department filed in court on 13th May 2019 after this court commissioned for the same, the accused told the Children's Officer that she intends to go back to school in form 2 while in custody and feels that she may not concentrate while taking care of EN at the same time.

To guide the court to determine this matter bearing in mind the best interest of baby EN. this court took particulars of the parents of the accused. JN told the court that he was the father of the accused and that baby EN is the son of the accused. He told the court that he is married to SW and together they have six children including the accused who is their second born child. The oldest in the family is SN aged 26 years and the youngest is GM aged 8 years. J said he was employed and that he lives in Kariobangi with his family. He said that the family house is adequate for the family and that he will ensure that baby EN is taken care of. SW confirmed the evidence of J. She said she runs a green grocer near her home in Kariobangi and that she will take care of baby EN.

I have read with care the report of Nancy Waswa, Children's Officer, filed in court on 13th May 2019. Nancy visited the home of JN and SW. Her report is that the family of seven live in a one bedroomed house in a building called [particulars withheld] and that the children aged between 26 years and 7 years. Nancy made her conclusions that a one bedroomed house hosting both parents and five children, two of who are adults and three are minors is not conducive for baby EN. Nancy recommended that the child remains with his mother the accused because there are good services for the children below the age of four years given that the child is at his formative stage when bonding with the mother is very crucial.

I have considered this matter carefully. Our law, from the Constitution to the Children's Act emphasize on the considerations to be taken into account when dealing with issues touching on the children. The paramount consideration is the best interest of the child. Indeed, **Article 52 (2) of the Constitution** states that: ***A child's best interests are of paramount importance in every matter concerning the child.***

It is my view, given the information availed to this court on the living conditions of the family of JN, it would not be in the best interests of baby EN to be released to the grandparents. I have no doubt in my mind that they love their grandchild. However, in my view, it would be in the best interests of this baby to remain with his mother in custody given the services available for the children there. Consequently, I decline to grant the prayer sought to release baby EN to his grandparents. Orders shall issue accordingly.

Dated, signed and delivered this 5th June 2019.

S. N. Mutuku

Judge