



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION
ADOPTION CAUSE NO. E260 OF 2024

IN THE MATTER OF THE CHILDREN ACT
AND
IN THE MATTER OF BABY ABEL
AND
IN THE MATTER OF AN APPLICATION FOR SUBSTITUTION
OF AD LITEM
BY
VINCENT BOSIRE MARORO AND EVERLYNE OMWANDO

RULING

1. Before this court for determination is a Notice of motion application dated **1st October, 2025** brought pursuant to **Order 32 rule 15** of the **Civil Procedure Rules, 2010**, seeking the following orders;

- i. Spent**
- ii. Spent**
- iii. THAT the Honourable Court be pleased to appoint Jackline Anyango Apondo as the new Guardian ad Litem for Baby Abel.**
- iv. THAT costs of this application be in the cause.**

2. The application is anchored on the grounds on its face and supported by the affidavit of fitness of the proposed Guardian Ad Litem sworn by Jackline Anyango Apondo of even date. In the said grounds the applicants states that the subject Baby Abel is incapable of representing himself. That due to the distance between the minor and the Guardian Ad Litem, they can hardly access the minor hence unable to continue in that role. That the proposed guardian is a suitable person for the substitution and has consented to act in the best interest of the minor. Finally, it is in the best interest of justice and fairness that the substitution is allowed. The applicant has also attached a consent to act as Guardian Ad Litem.

ANALYSIS AND DETERMINATION

3. I have considered the application herein and the affidavit in support and the Guardian Ad Litem report by the applicant and the issue for determination is whether the applicant is fit to be appointed Guardian Ad Litem.
4. It is important to note that there is a pending adoption application by Vincent Bosire Maroro and Everlyne Nyasuguta Omwando dated **29th November, 2024**. This Court on **8th May 2025**, appointed Esther Kathomi Martin and Martin Kamau as Guardian ad Litem of Baby Abel. The court also directed the Director Children Services and the Guardian Ad Litem to compile a requisite report on the applicant's fitness to adopt the minor within 45 days.

5. This Court is guided by the provisions of **Article 53 (2)** of the **Constitution of Kenya 2010** in any decision relating to children. It states that;-

“ A child’s best interests are of paramount importance in every matter concerning the child.”

6. The said principle is also provided for under **Section 8 (1)** of the **Children Act 2022**. It provides that;

“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;

(b) the best interests of the child shall include, but shall not be limited to the considerations set out in the First Schedule.”

7. In **Re B (Baby) (2018) eKLR** while discussing the interests of a child, the Court stated as follows;

“The purpose of Kenya’s Constitution and Children’s Act is to protect and promote the welfare of Children by providing them with stable family units. The fundamental concern therefore in every adoption cause provision is of the best interest of that very child.

It is that family unit that the constitution contemplates under Article 45 which also has to

take responsibilities in fulfilling the obligations enjoined in Article 53 of the same constitution.”

8. The appointment of guardian ad litem is governed by **Section 188** of the **Children Act**. It provides as follows;

1) Where an application is made for an adoption order, the Court shall, either of its own motion or on application by any party to the proceedings, make an order appointing a fit person to be guardian *ad litem* of the child to whom the application relates.

2) The guardian *ad litem* shall be under duty to—

(a) safeguard the interests of the child pending the determination of the adoption proceedings;

(b) investigate and report to the Court on the facts and circumstances relating to the adoption of the child;

(c) make recommendations as to the propriety of making any interim orders or an adoption order in respect of the child;

(d) intervene on behalf of the child and arrange for the care of the child in the event of the withdrawal of any consent prescribed by this Act; and

(e) undertake such other duties as the Court may from time to time direct, or as may be prescribed by the rules.

3) Where arrangements for the adoption of any child have been made by an adoption society, neither the society nor any member thereof shall be appointed guardian of the child in relation to the adoption.

4) The appointment of a guardian *ad litem* shall expire upon the making of a final order by the Court under this Part, unless the Court, having regard to the interests of the child, extends the period of the appointment.

9. This court had appointed Esther Kathomi Martin and Martin Kamau as Guardian ad Litem of Baby Abel. It now appears that the said Guardian Ad Litem is not ready to take that responsibility. I therefore allow the application and substitute Jackline Anyango Apondo in place of Esther Kathari Martin as the Guadial ad Litem of Baby Abel.

10. Costs in the cause.

It is so ordered.

DATED and DELIVERED at NAIROBI this 16th day of December, 2025.

E. K. OGOLA
JUDGE

In the presence of:

M/s Musungu.....for the Applicant

Gisiele M..... Court Assistant

ORIGINAL