



**In re AAN (Child) (Family Miscellaneous Civil Case E024 of 2025)
[2026] KEHC 399 (KLR) (22 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 399 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
FAMILY MISCELLANEOUS CIVIL CASE E024 OF 2025
FN MUCHEMI, J
JANUARY 22, 2026
IN THE MATTER OF AN APPLICATION BY SKN AND
TWK TO BE APPOINTED AS JOINT GUARDIANS TO AAN**

IN THE MATTER OF

**SKN 1ST APPLICANT
TWK 2ND APPLICANT**

JUDGMENT

Brief facts

1. The Amended Originating Summons for determination dated 17th December 2024 seeks for a declaration that the applicants and CWN be appointed joint guardians over AAN (the child); that the mother of the child CWN be granted access and visitation rights of the child; the applicants be granted sole maintenance, legal and actual custody of the child; that leave for the applicants to remove the child from the jurisdiction of the Republic of Kenya be granted as well as orders for extension of guardianship to go beyond the child’s eighteenth birthday that is up to the age of 25 years.

The Applicants’ Case

2. The applicants aver that they are uncle and aunt to the child with the 1st applicant being the brother to the father of the minor. The applicants state that the father of the child is deceased and the mother is the surviving guardian of the child. It is further deposed that the minor has been in the sole care, control and actual custody of the applicants since the year 2015 when the father of the minor passed away. The applicants state that the mother of the minor has consented to their appointment as joint guardians of the child and has given further consent to them to leave the jurisdiction of the Republic of Kenya with the child.
3. The applicants state that they have gotten an opportunity to travel for work to the United Kingdom and they would like the child to accompany them as she is a member of their family. The applicants



further state that the fact that they are taking the child out of the Republic of Kenya is an exceptional circumstance which makes it necessary and proper for the Honourable Court to make an order extending the guardianship to the child beyond the eighteenth birthday.

4. The applicants aver that they have not been blessed with any issues of their own and they have been raising the child as their own for nine years uninterrupted. Further, the applicants state that they have educated the child and she has lived with them happily in their home. The applicants state that the mother of the child has willingly consented to the application and she is happy with the care that they have given the child.

Issue for determination

5. The main issue for determination is whether the applicants have satisfied the legal requirements under the Children's Act to be granted guardianship orders as well as other incidental orders.

The Law

6. Section 122(2) of the [Children Act](#) authorises a court to appoint a guardian for any child who is resident in Kenya irrespective of whether the child was born in Kenya. Further Section 122(4) of the [Children Act](#) provides that a guardian who is not the father or mother of the child shall not remove the child from the jurisdiction of the Republic of Kenya without obtaining an order of the Court, and such leave shall be granted only in exceptional circumstances and in accordance with subsection (6). In the instant case, the child is a citizen of Kenya as shown by a copy of the child's birth certificate serial number 553XXXX. The child was born in Kiambu County on 7th December 2010 according to the said certificate. The child is currently resident in Kenya as she lives with the applicants in Githunguri, Kiambu County.
7. The child's biological parents are DMN now deceased and CWN. The death certificate serial number 0417652 has been annexed to the originating summons. The 1st applicant deposed that the biological father of the child was his brother and as such he and the 2nd applicant are an uncle and aunt to the child.
8. The biological mother of the child has consented vide her affidavit dated 18th June 2024 to the applicants being appointed joint guardians of the child and for them to leave the jurisdiction of the Republic of Kenya with the child. It is further confirmed that the child has lived with the applicants since the year 2015 and they have taken care of the child and educated her with the child living happily with the applicants.
9. 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](#) provides:-

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 priority consideration.
10. The child herein has for the past ten years has been under the care of the applicants. During the said period, the child has bonded with the applicants and views them as parental figures in her life. Further, the child's biological mother is both aware of and has given her approval to this arrangement. She has consented to the instant application. I have further perused the children officer's report dated 11th June 2025 and the report was favourable for the applicants to be granted joint guardianship over the child. It is my considered view that the applicants ought to be granted joint guardianship over the child with access and visitation rights granted to the mother of the minor.



11. The applicants have further stated that they work in the United Kingdom and would wish to move the minor there. I have perused the record and noted that the applicants both work in the United Kingdom and that they are financially secure to take care of the child. The applicants live in a two-bedroom house in Waterhead Lakeside. It is therefore, in the best interests of the child to live with the applicants in the United Kingdom as they have lived together and are members of her extended family. The biological mother of the child has consented to the child moving to the United Kingdom to live with the applicants.
12. The applicants have additionally sought for the extension of guardianship following appointment to go beyond the child's eighteenth birthday, that is, up to the age of 25 years. Section 127 of the [Children Act](#) provides that the appointment of a guardian shall expire upon the child attaining the age of eighteen years, unless exceptional circumstances exist that would require a court to make an order that appointment be extended.

The exceptional circumstances referred to in subsection (1) are that the child suffers from a mental or physical disability or from an illness that will render him incapable of maintaining himself, or managing his own affairs and his property without the assistance of a guardian after his eighteenth birthday or such other exceptional circumstances with regard to the child as the court may deem proper to warrant the making of an order under this section.
13. I have perused the record and noted that moving with the child to the United Kingdom presents an exceptional circumstance as the child is currently aged 14 years and being that she needs the assistance of her guardians in the foreign country. Thus, it is my considered view that the appointment of guardianship ought to be extended until the child attains the age of 25 years.
14. It is my finding that the applicants have complied with all the requirements of the law for purposes of guardianship. I hereby grant the following orders: -
 - a. That the applicants are hereby appointed guardians of child AAN.
 - b. That the mother of the child CNN is hereby granted unlimited access and visitation rights to the child.
 - c. That the applicants are hereby granted rights of access and actual custody to the child as well as the responsibility of maintenance.
 - d. That the applicants are hereby granted the authority to remove the child from the Republic of Kenya to the United Kingdom.
 - e. That the legal and actual custody of the minor shall extend up to attainment of the age of twenty-five (25) years.
15. There shall be no order as to costs
16. It is hereby so ordered.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 22ND DAY OF JANUARY 2026.

F. MUCHEMI

JUDGE

