



**CWK v JM (Family Miscellaneous Civil Case E005 of 2024)
[2025] KEHC 6985 (KLR) (27 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6985 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
FAMILY MISCELLANEOUS CIVIL CASE E005 OF 2024**

LN MUTENDE, J

MAY 27, 2025

**IN THE MATTER OF AN APPLICATION FOR GUARDIANSHIP
OF D. N. AND F. M**

BETWEEN

CWK APPLICANT

AND

JM RESPONDENT

JUDGMENT

1. C.W.K. the Applicant through originating summons seeks to be appointed the legal guardian in respect of minors DN and FM.
2. The application is supported by an affidavit deposed by the Applicant who avers that she is the grandmother of the minors whose mother died on or about January 2024 from cancer. That following their mother’s sickness she moved to stay with the minors at the Applicant’s place at Manyatta area the children’s current known home.
3. That the minors attend school at [particulars withheld] ECD, Manyatta location where they continue to reside after their mother’s demise.
4. That the father of the minors has declined to take up parental responsibility despite being called upon to do so.
5. That the Applicant is a person of means who can support the minors till they attain the age of majority, hence qualified to act as the guardian of the children and she has no interest of causing anything adverse to the minors.



6. In order for the court to establish the capacity of the Applicant the appointment as a guardian and the circumstances of the children, it did cause the Directorate of Children Services to investigate and file a report.
7. Through a report by Mr. Kiprof Nicholas, Children Officer, Nyandarua West, it is established that the children aged 6 years and 4 years respectively were happy staying with their grandparents. That they have been enrolled at a private school ([particulars withheld] Manyatta) a school with strong academic reputation. Their health care needs are met. Their grandfather is a retired civil servant while the Applicant is a prominent farmer and the minors have a strong extended family support system.
8. Efforts by the Children Officer to reach their father the surviving parent were fruitless. It was established that he had shown minimal involvement and failed to contribute to the children's emotional or financial wellbeing since their mother's passing.
9. I have considered the application. Whatever orders the court makes must be in the interest of the child. (See Section 8 of the [Children Act, 2022](#))(Act)
10. Section 122 of the Act provides that:

“guardian” means a person appointed by will or deed by a parent of a child or by an order of Court to assume parental responsibility over a child on the death of the parent of the child either alone or jointly with the surviving parent of the child in accordance with the provisions of this [Act](#);

 - (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.
 - (3) A guardian appointed under this Act shall be a Kenyan citizen.
 - (4) A guardian who is not the father or mother of a 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).
 - (5) Where leave is granted under this section, the Court shall impose such conditions and restrictions as it shall consider appropriate having regard to the best interests of the child.”
11. Section 102 (3) of the [Act](#) Provides that:
 - (1) A Court may, on the application of one or More persons qualified under subsection (3), make an order vesting the legal custody of a child in the applicant or applicants.
 - (3) Any of the following persons may be granted custody of a child—
 - (a) a parent;
 - (b) a guardian;
12. Section 103 of the [Act](#) provides as follows:



- (1) In determining whether or not a custody order should be made in favour of an applicant, the Court shall have regard to—
- (a) the conduct and wishes of the parent or guardian of the child;
 - (b) the ascertainable wishes of the relatives of the child;
 - (c) the ascertainable wishes of the child taking into account the child's evolving capacity;
 - (d) whether the child has suffered any harm or is likely to suffer any harm if the order is not made;
 - (e) the customs of the community to which the child belongs;
 - (f) the religious persuasion of the child;
 - (g) whether a care order, supervision order, personal protection order or an exclusion order has been made in relation to the child concerned, and whether those orders remain in force;
 - (h) the circumstances of any sibling of the child concerned, and of any other children of the home, if any;
 - (i) any of the matters specified in section 95(2) where the court considers such matters to be relevant in the making of an order under this section; and
 - (j) the best interest of the child.
13. From the requirement per the provisions of the law, the Applicant is a relative of the children and better placed to make the application. It is apparent that their father has no interest in taking up his parental obligations.
14. In the premises, following the recommendation of the Children Officer. I hereby grant the Applicant full custody of the minors D.N. and F. M. If their father so wishes, he may have supervised visitation. The guardianship order shall lapse upon the children attaining the age of 18 years.
15. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS THIS 27TH MAY 2025.

L. MUTENDE

JUDGE

