



**In re BM (Minor) (Family Miscellaneous Civil Case E001 of 2024)
[2025] KEHC 11794 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11794 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
FAMILY MISCELLANEOUS CIVIL CASE E001 OF 2024
CM KARIUKI, J
JULY 31, 2025
IN THE MATTER OF BM (MINOR)**

BETWEEN

AWKS APPLICANT

AND

HKN 1ST INTERESTED PARTY

PMK 2ND INTERESTED PARTY

IMK 3RD INTERESTED PARTY

AND

HARISON KIRIMI NYAGA INTERESTED PARTY

RULING

Introduction.

1. The 1st Interested Party, HKN, seeks urgent intervention by the Court due to the Applicant’s failure to comply with a custody order issued on 21st March 2025, which directed the handover of the minor, BM, on 28th March 2025.
2. Despite police presence at the handover site (Particulars withheld Primary School), the Applicant resisted the order, incited unrest, and necessitated police reinforcement. The situation was eventually calmed by the OCS, who verified the court order and handed over the minor to the 1st and 2nd Interested Parties.
3. The minor has since returned home but is struggling academically and emotionally, reportedly due to mistreatment while in the Applicant’s custody. The 1st Interested Party now seeks a review of the 50-50 holiday custody arrangement, proposing full custody to him and the 2nd Interested Party, with



daytime visitation rights for the maternal grandmother, for the best interest, education, and welfare of the minor.

4. Before this Court is a Notice of Motion application dated 7th April 2025 and filed under certificate of urgency by the 2nd Interested Party, PMK, seeking a review of existing custody arrangements and orders in relation to the minor BM. The application is brought under Sections 8, 9, 11, 12, 13, 14, 16, 22, and 95 of the *Children Act*, Sections 1A, 1B, and 3A of the *Civil Procedure Act*.

Reliefs Sought

5. The Interested Parties seek the following substantive reliefs:
 - i. That the Court reviews the current 50-50 holiday custody arrangement.
 - ii. That guardianship of the minor be granted to the 1st and 2nd Interested Party, as recommended by the Ngong Children's Officer.
 - iii. That the Court intervenes to ensure compliance with earlier court orders, citing persistent disobedience by the Applicant.
 - iv. That the Court considers taking legal action against the Applicant for contempt of its orders.

Grounds in Support.

6. The application is grounded on the premise that the Applicant, despite being the custodian of the minor, has willfully disobeyed court orders issued on 21st March 2025 and 26th March 2025. The orders directed the handing over of the child to the Interested Parties with police and children's officer escort for implementation. The applicants argue that the Applicant's conduct endangers the well-being of the minor, hinders bonding with siblings, and disrupts the child's education and remedial learning.

Affidavit Evidence

7. In her supporting affidavit, the 2nd Interested Party reiterates the foregoing and affirms that unless the Court intervenes urgently, the child's welfare will be compromised. She further depones that the continued contempt by the Applicant erodes the authority of the Court and frustrates the best interests of the minor.

Previous Orders of the Court

8. On 26th March 2025, this Court issued orders requiring: The OCS Narok Police Station and the Narok County Children Officer to assist in collecting and handing over the child to the Interested Party on 28th March 2025 between 10:00 a.m. and 12:30 p.m. That the said handover be for the purpose of implementing earlier orders of the Court issued on 21st March 2025.

The response

9. AWK, the maternal grandmother of the minor, swore a replying affidavit on 9th April 2025 in response to the application for guardianship made by the 1st and 2nd Interested Parties. She firmly opposes the application, calling it meritless, frivolous, and made in bad faith. Her central concern is the best interest of the child, especially after the tragic loss of the minor's parents in a car accident in February 2024.
10. A explains that following the accident, both families agreed that the child would live with her paternal grandmother but would spend school holidays with her in Narok. However, after she returned home, the child was instead handed over to the 1st and 2nd Interested Parties, who then cut off all



communication and denied her access to the minor. After five months of no contact, A filed for guardianship in July 2024 and later requested holiday custody, but the delay in court proceedings meant she missed the August holidays.

11. In November 2024, the court directed that the minor be released to her for December holidays, but the Interested Parties ignored the orders and refused to respond or cooperate. Further court directions revealed that the Interested Parties had relocated from Makueni to Ngong without informing her. A consent was later recorded in December 2024, which A agreed to honor.
12. By January 2025, with no word from the Interested Parties about the minor's schooling, and unwilling to keep the child idle, A enrolled her in [Particulars withheld] Primary School in Narok. The child settled in well and was progressing academically and socially.
13. However, during end-of-term exams in March 2025, the Interested Parties unexpectedly stormed the school on the 24th, demanding custody of the child, which the head teacher refused due to the child being mid-exams. They returned again on the 28th with armed police, causing panic among pupils and disrupting learning. A and the minor were taken to the police station, where the child was handed over to the Interested Parties under court orders—allegedly without proper documentation or consideration of the child's emotional well-being.
14. A questions why the Interested Parties took so long to re-enroll the child in school and claims they misrepresented the situation to the court, including portraying her as a kidnapper. She argues that their actions and disregard for the minor's routine and relationships demonstrate poor judgment regarding the child's best interests.
15. She refutes the Interested Parties' claims that the child was mistreated under her care and emphasizes their longstanding, loving relationship—one that was nurtured even during the lifetime of the child's parents. She believes that their attempt to shut her out of the child's life is unjust and harmful to the minor's emotional and psychological welfare.
16. A expresses concern over the Interested Parties' frequent relocations due to job transfers and their lack of a permanent home, which contrasts with her own stable living situation, reliable farming income, and consistent presence in the child's life. She argues that guardianship should not be granted to the Interested Parties as it would risk cutting the child off from her maternal family.
17. She criticizes the Ngong children officer's report as biased and procedurally unfair since she was never consulted and urges the court to disregard it. She also accuses the Interested Parties of withholding vital information about the child's current school, making it impossible for her to be listed as a guardian.
18. In conclusion, A asks the court to reject the guardianship application filed by the Interested Parties, maintain the 50-50 holiday custody arrangement, and compel them to disclose full details about the minor's schooling. She reiterates her commitment to the child's best interests and welfare.

Analysis and Determination

Issues for Determination

19. The Court has distilled the following key issues for determination:
 - i. Whether the Applicant has willfully disobeyed court orders.
 - ii. Whether the existing 50-50 holiday custody arrangement is in the best interests of the minor.
 - iii. Whether the 1st and 2nd Interested Parties should be granted full guardianship of the minor.



- iv. Whether contempt proceedings against the Applicant are warranted.

a. Disobedience of Court Orders

20. There is no dispute that this Court issued orders on 21st and 26th March 2025 requiring the Applicant to facilitate the handover of the minor to the Interested Parties with police and children’s officer assistance. From the affidavit evidence, the Applicant did not voluntarily comply, resulting in police intervention and eventual handover at the school premises.
21. The conduct by the Applicant — including inciting unrest and failing to observe the spirit of lawful orders — is, in the Court’s view, regrettable. Parties must act in utmost good faith, particularly where the welfare of a minor is concerned. However, contempt proceedings are quasi-criminal and must meet a high threshold of proof. While the Applicant’s conduct verged on defiance, the incident appears to have been resolved without lasting harm or demonstrable bad faith sufficient to sustain contempt sanctions at this stage.

b. Best Interests of the Child

22. The paramount consideration under Section 8 of the *Children Act* remains the best interests of the child. The minor, now orphaned, has emotional and psychological needs that go beyond mere custody disputes. From the affidavit evidence of both sides, it is clear that the child has previously enjoyed care from both the Interested Parties and the maternal grandmother.
23. The Court notes the 1st and 2nd Interested Parties’ claim that the minor’s schooling and well-being were disrupted while in the Applicant’s care. However, the Applicant has convincingly rebutted this, presenting a narrative of stability, school enrolment, and loving care. The Interested Parties’ act of relocating the minor without disclosing schooling details and preventing communication with the Applicant raises serious concerns regarding their openness and intention to facilitate ongoing familial relationships.
24. The Ngong Children Officer’s report, while supportive of the Interested Parties, is also challenged for alleged procedural unfairness and lack of consultation with the maternal side of the family. The report, therefore, cannot be taken as conclusive.

c. Review of Custody and Guardianship Arrangements

25. In light of the evidence, this Court finds that a complete overhaul of the current shared custody arrangement would not serve the best interests of the minor at this point. The 50-50 holiday arrangement, though strained, still offers the minor a critical link to both families. That said, the arrangement must be refined for better enforcement and accountability.
26. This Court declines to grant full guardianship to the 1st and 2nd Interested Parties alone. The minor’s maternal grandmother, the Applicant, has demonstrated a consistent commitment to the child’s welfare and stability.
27. On the issue of frequent relocations, the Interested Parties are cautioned that stability in housing and schooling is crucial. They must endeavor to maintain consistency or adequately inform the Court and the Applicant of changes.

Orders and Directions

28. In view of the foregoing, the Court makes the following orders:



- a. The application for full guardianship by the 1st and 2nd Interested Parties is hereby declined.
- b. The current 50-50 holiday custody arrangement shall be retained, but the following modifications shall apply to ensure the minor's stability and emotional well-being:
 - i. The Interested Parties shall disclose in writing to the Applicant and the Court the name and contact details of the minor's current school within 7 days.
 - ii. The Applicant shall be listed as an emergency contact and acknowledged as a guardian at the minor's school unless there are compelling reasons otherwise.
 - iii. Communication between the minor and the Applicant shall not be impeded during school terms.
- c. All parties are directed to refrain from confrontational or disruptive retrieval of the minor. Future transitions shall be coordinated with the assistance of the County Children Officer and local police.
- d. The prayer for contempt is declined, but a stern warning is issued to the Applicant to comply with lawful court orders moving forward. Any future breaches will invite appropriate sanctions.
- e. The County Children's Department, Narok and Ngong, are directed to conduct a joint home and welfare assessment of both households within 30 days and file an updated report on the minor's progress and recommendation for long-term guardianship.
- f. Mention for compliance and filing of the welfare report shall be on 23.9.2025

29. Orders accordingly.

**DATED, SIGNED, AND DELIVERED AT NAROK THROUGH TEAMS APPLICATION, THIS
31ST DAY OF JULY 2025**

CHARLES KARIUKI

JUDGE

