

IN THE HIGH COURT OF SINDH, KARACHI

CONST. PETITION NO. S-349 OF 2026

Petitioners : M/s. Saira Adnan Haji and Haider Waheed
through Mr. Hussain Idress, Advocates

Respondent : Adnan Shams Haji through Mr. Yahya Sial,
Advocate

Date of hearing & : **03.08.2026**

Order

ORDER

NISAR AHMED BHANBHRO, J. This petition is directed against the order dated 09.04.2026 passed by the learned Appellate Court viz. VII Additional District Judge Karachi-South in Family Appeal No.06 of 2026 (Re- Ms. Saira Adnan Haji Vs. Adnan Shams Haji) and order dated 19.11.2025 passed by the learned Trial Court viz XVIth Family Judge (South) Karachi in Guardian and Wards application No. 233/2025 (Re- Ms. Saira Adnan Haji Vs. Adnan Shams Haji), whereby an application filed by the Petitioners for change of the parentage of Minor Serina was declined.

2. In nut shell, the dispute between the parties relates to the guardianship and surname of the minor, Serina. Baby Serina was born to Petitioner No 1 Saira on 18.10.2010 out of her wedlock with Jibran Javed. The marriage contract between Petitioner No 1 (Saira) and Jibran could not survive and stood dissolved in year 2013. Thereafter in year 2015, Petitioner No 1 (Saira) contracted second marriage with Respondent Adnan Shams Haji. At the time of the second marriage of Petitioner No.1 (Saira), the minor Serina was approximately five years of age. This fact stands established from the Birth Registration Certificate of Baby Serina issued by NADRA (available at page 57 of the Court file), wherein the minor's name is recorded as "Serina Adnan Haji d/o Jibran Javed."

3. Record further evidenced that during subsistence of second marriage of Petitioner No 1 with Respondent Adnan Shams Haji, an application under section 7 & 10 of the Guardian & Wards Act 1890 (G&W Act) seeking guardianship of the minor, Serina, was filed by Respondent Adnan Shams Haji before the Guardian Court viz. Court of Civil Judge & Judicial Magistrate XXIII Karachi (East). In the said proceedings, Javed Jibran, the biological father of Baby Serina, appeared and filed his affidavit of no objection for appointment of Mr. Adnan Shams Haji as Guardian of the minor. The application was allowed, and the Respondent Adnan Shams Haji was appointed as Guardian of the person of minor, vide order dated 30.01.2018.

4. The marriage between Petitioner No.1 (Saira) and respondent, Adnan Shams Haji, stands dissolved too by way of divorce pronounced by Respondent on 21.09.2024. On dissolution of marriage Petitioner No 1 and Baby Serina started residing separately, as such necessity arose to file an application for terminating the Guardianship of Respondent Adnan Shams Haji and appointment of new Guardian. Petitioners filed application under section 7 & 10 of the G&W Act, before Learned Trial Court, seeking termination of Guardianship of Respondent Adnan Shams Haji and appointment of Petitioners as Guardian of baby Serina and removal of surname of Respondent from the name of Baby Serina.

5. It further transpires from the record that during proceedings Petitioner No 1, filed an application for grant of interim guardianship certificate, enabling her to seek correction in the surname of Baby Serina in NADRA and Cambridge School record. Learned trial Court, vide order dated 19.11.2025, dismissed the said application on the ground that such a certificate could only be issued after framing the issues and recording of evidence of the parties. The order was challenged in appeal before Learned Appellate Court but without fruits, hence this Petition.

6. I have Heard arguments of Parties at length, through Learned Counsel. Learned Counsel for the Petitioners contended that Respondent is not biological father of minor, as such he cannot act as her guardian, more particular when wedlock of Respondent with mother of the minor

has ended, hence Respondent became “Na- Muharram” for minor. Contrary to that Learned Counsel for the Respondent supported impugned orders and by placing reliance upon the cases of **Urooj Tabani v. Federation of Pakistan & Ors. (PLD 2021 Islamabad 105)**, **Khalid Pervaiz ul Haq vs. Mst. Hina Asif & Ors. (PLD 2025 SC 847)**, **Arshad Rasool vs. Mst. Saniya & Ors. (2019 YLR 700)** and **Syed Saghir Ahmad Naqvi vs. Province of Sindh & Ors. (1996 SCMR 1165)** contended that matter involved disputed questions of fact, thus cannot be resolved without recording evidence.

7. It is by now settled and there is no cavil to the proposition that the issue of guardianship of a minor is determined keeping welfare of the minor as paramount consideration. If there is dispute over the custody of minor between real parents and in order to arrive at an ultimate conclusion, where the welfare of minor lies, evidence of the parties is necessary and is recorded to prove the respective capacity to pay off the interests of minor. However, the facts and circumstances of the present case are distinguishable. Respondent Adnan Sham Haji was appointed as Guardian of Person of the minor by the Guardian Court vide its order dated 30.10.2018, solely on the basis of no-objection furnished by her real father. Even at that time, Respondent Adnan Shams Haji was not a suitable and proper person to be appointed as Guardian of Person of Minor in presence of her mother and further more the said order is also silent with regard to the determination of welfare of minor.

8. As of now, the marriage between Saira and Adnan Shams Haji stands dissolved, thereby materially altering the circumstances under which the guardianship order was originally passed, therefore, the order dated 30.10.2018 ceased to have its effect. Under the prevailing circumstances Respondent cannot claim Guardianship Rights or right to regulate the custody of minor. For all means and purposes, the presence of real parents of minor overwhelmed the judicial verdict, which in fact is a void order passed contrary to legislative intent envisaged under section 17 of the G&W Act, for the sake of convenience section 17 is reproduced below:

17. Matters to be considered by the Court in appointing guardian.--- (1) *In appointing or declaring the guardian of the minor, the Court shall, subject to the provisions of this section, be guided by what, consistently with the law to which the minor is subject, appears in the circumstances to be for the welfare of the minor.*

(2). *In considering what will be for the welfare of the minor the Court shall have regard to the age, sex and religion of the minor, the character and capacity of the proposed guardian and his nearness of kin to the minor, the wishes, if any, of a deceased parent, and any existing or previous relations of the proposed guardian with the minor or his property.*

(3). *If the minor is old enough to form an intelligent preference, the Court may consider that preference.'*

9. From the above provisions of law, it is vivid and crystal clear that prime and foremost consideration is to decide the question of custody of a minor is his or her welfare and betterment. Welfare of the minor would outweigh against all other considerations. It is also apparent from the bare reading of section 17(2) of the Act that character and capacity of the proposed guardian as well as age and sex, is also an important factor to be considered while determining the welfare of the minor. It has been invariably held by the Honorable Supreme Court in unison way that the right of custody of minor is not an absolute right rather it is always subject to the welfare of the minor. The Court in the light of law, on the subject and facts and circumstances of each case considers the question of custody on the basis of welfare of minors and there can be no deviation to the settled principle of law that in the matter of custody of minor the paramount consideration is always the welfare of minor.

10. In the case of Baby Serina, her welfare lied in the lap of her mother. It baffles the wit that under what capacity, Respondent claimed for appointment as Guardian of Minor and named Baby Serina after his

surname. Being step father, he was not entrusted with any responsibility to make such claim. On divorce between the parties, the dispute regarding the guardianship of minor stood resolved in favour of the mother, once her marriage with the respondent came to an end, the status of Respondent as step father also stood abolished. Since the minor is now approximately 16 years of age and not under the biological decedence of Adnan Shams Haji, therefore, the issue of guardianship did not remain under dispute necessitating to adduce evidence. In the peculiar facts and circumstances of the case, the welfare of the minor lied with her real parents. Since father did not contest for guardianship and conceded to grant guardianship in favor of petitioners and minor was residing with her mother, therefore, Saira being mother was a natural guardian and best suited person to retain custody of minor baby Serina.

11. As regards the other relief sought by the petitioners concerning the correction of the minor's surname or parentage as the case may be. It appears that the minor's name is presently recorded as "Serina Adnan Haji," whereas she is the biological daughter of Jibran Javed. The said name appears to have been adopted at the time when her mother contracted second marriage with Adnan Shams Haji, this incident happened five years after the birth of Serina. Under the injunctions of Shariah, as well as the principles embodied in the United Nations Convention on the Rights of the Child, a child who is neither an orphan nor abandoned has the right to be identified by and associated with his or her biological parentage. Consequently, attributing the parentage or surname of the minor to a person who is not her or his parent may prejudice legal identity and could adversely affect future, including educational, professional, and personal affairs, particularly when Baby is under transition process of attaining full maturit.

12. To adopt children who were orphans was a customary practice during pre Islamic era. In adoption before the restrictions were made, it was much like the system of adoption that is known to most of us now, where an adopted child assumes the identity of an actual biological child of the adopters and assumes all rights as a child proceeding from the couple naturally. The children's names would be changed to the family name

of the adopters, inheritance would result as in the case of a natural child and the natural parents and family of the adopted child would be cut off from the child. Barriers of marriage would be assumed and non-related people would walk around in a relaxed way as if they are related. In the case of Serina though she was not an adopted child but her surname was changed for the reasons of affection and celebration to a new relation created due to the marriage of her real mother with Adnan Shams Haji. Change in parental Surname of the minor was an act contrary to law and Sharia.

13. Practice of changing the parentage of adopted children has been condemned under the Divine Revelations. Almighty Allah ordained that a person be named after his real parents. Almighty Allah decreed in Ayah 5 of Surah 33 (Al-Ahzab) as follows:

"Let Your adopted children keep their family names. That is more just in the sight of Allah. But if you do not know their fathers, then they are simply your fellow believers and close associates. There is no blame on you for what you do by mistake, but only for what you do intentionally. And Allah is All Forgiving, Most Merciful.

[Qur'an 33:5)

14. As discussed supra, that Baby Serina is not the real daughter of Respondent Adnan Shams Haji, therefore, she was vested with a natural right to be called by her original parents. Such principles find clear resonance in Articles 9, 14, 25 and 34 of the Constitution of Islamic Republic of Pakistan, of 1973 (the Constitution). Article 9 guarantees the right to life, which includes the right to a healthy, secure, and meaningful life. Article 14 protects the inherent dignity of every person, including children. Article 25 enshrines equality before the law and non-discrimination, and Article 34 obligates the State to ensure the protection of motherhood and childhood. The Constitution further reinforces these obligations. Article 25(3) empowers the State to enact special provisions for the protection of children, including measures that may favorably differentiate them from adults. Article 25A

mandates free and compulsory education for children aged 5 to 16 years. Article 35 specifically ensures the protection of marriage, the family, the mother, and the child. Article 37(e) guarantees just and humane working conditions, explicitly prohibiting child labour in vocations unsuitable to their age or sex. These provisions collectively prioritize the well-being, rehabilitation, and integration of children into society, and provide a solid legal basis for rights-based adjudication in matters affecting them.

15. The United Nations Convention on Child Rights 1989 to which Pakistan is also a party, lays down principles as to the identity of the children. Article 7, 8, 9,10,11,12,16,18 and 20 of the UN convention being relevant are reproduced below:

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a

particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the

national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. *For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.*

3. *States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.*

Article 20

1. *A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.*

2. *States Parties shall in accordance with their national laws ensure alternative care for such a child.*

3. *Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.*

16. The Convention binds all the states Party to the convention to take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

17. Though the matter brought by the Petitioners did not require judicial interference and fell within the administrative domain of the concerned department failure thereof recourse was made to the Court. The Court of law are not merely a forum for resolving disputes; Courts are the constitutional conscience of the nation, tasked with producing progressive and principled jurisprudence that breathes life into the law and bridges the distance between law and the lived realities of the people. The Courts are the ultimate guardian of fundamental rights and the final sentinel against executive or legislative overreach. Failure to act against the illegal and unlawful actions of the executive would erode the public confidence in judicial system. Courts are not passive interpreters of text, they are the custodians of liberty, equality, and institutional independence. The Court must remain alive to the evolving aspirations of society and innovate new remedies to advance justice. Court are to act with integrity and courage, to ensure the enforcement of fundamental rights of individuals. Learned Guardian Court, therefore instead of entering into technical issued would have made insight into real controversy and ought to have resolved it by appropriate orders.

18. For the foregoing reasons, a case for indulgence of this Court to exercise its corrective and supervisory powers conferred under article 199 of the Constitution is made out. Consequently, the order dated 09.04.2026 passed by the learned Appellate Court, as well as the order dated 19.11.2025 passed by the learned trial Court, are hereby set aside. The application filed by the petitioners is granted in the following manner:

I. The guardianship of the minor, Serina, is hereby granted in favour of her mother, Petitioner No.1 herein, while leaving the biological father at liberty to agitate his right or claim, if so desired, in accordance with law.

II. NADRA and the concerned school authorities are directed to consider the request of the minor for correction/change of her name in accordance with her actual parentage. Petitioners shall submit an application with NADRA and the concerned school authorities, if not submitted earlier. The NADRA and the concerned school authorities are directed to do the needful and shall ensure to enter correct entries in respective records with

regard to the parentage or surname of the Baby Serina within one month's time on receipt of such application.

III. Proceedings before Learned trial court in the wake of the instant order became infructuous, and the same Learned Counsel for the Petitioner submits shall be withdrawn within two days' time.

19. The petition stands disposed of in above terms. Office is directed to send copy of this Order to Learned Trial Court for compliance.

JUDGE

Approved for Reporting

M. Ayaz Khan