

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Constitutional Petition No.S-21 of 2022 (New)

Civil Appeal No.S-10 of 2021 (Old)

DATE	ORDER WITH SIGNATURE OF HON'BLE JUDGE
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01. For orders on office objection "A"
02. For orders on maintainability of main case.

22-08-2025

Mr. Idrees Ahmed Mangi, Advocate for the petitioner.
Mr. Munwar Ali Abbasi, Assistant Advocate General.

The petitioner has assailed the order dated 02-11-2020, passed by the court of learned Family Judge, Larkana, wherein the Guardianship application No.21/2028 was allowed and custody of minors Adeel, Adil, Kamran and Dua was entrusted to the respondent Mola Bux. Petitioner filed a Guardianship Appeal No.15/2020, before the court of learned District Judge Larkana, which was assigned to 3rd Additional District Judge/MCAC Larkana, and vide its judgment dated 24-05-2021, the order dated 02-11-2020, passed by learned trial court was maintained. The reason which weighed both the courts below to pass the impugned orders was that Mst. Munwar Khatoon had contracted 2nd marriage, thus she had lost the right of Hizanat for the custody of minors. This matter is pending adjudication since the year 2022 and since last many dates the petitioner and her counsel are in attendance but the respondent No.1 has failed to turn up.

2. Learned Assistant Advocate General has conceded the submissions made by learned counsel for the petitioner.

3. Since the matter pertains to the issue of custody of minors u/s 17 of The Guardian and Wards Act, the choice of the minors has been given preference to the wishes of parents. Section 17 of Guardian and Wards Act reads as under:-

17. Matters to be considered by the Court in appointing guardian.__(1)

In appointing or declaring the guardian of a 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.

(4) [Repeal]

(5) The Court shall not appoint or declare any person to be a guardian against his will

4. The minors Adeel aged about 15 years, Adil aged about 13 years and Kamran aged about 12 years are present in the court along with their mother and when they were inquired about their preference to reside with any of the parents, they stated that since the separation of their parents, their father has not turned up to meet them, therefore, they have got no love, attraction or affection for him and they intend to reside with their mother. As far as the custody of minor baby Dua is concerned she is aged about 7 years and she is residing along with her 03 other brothers in the house of the petitioner Munwar Khatoon, though under Sharia she cannot be allowed to reside in the house of her step father but when her biological father has left interest in pursuing the matter, she cannot be deprived of the custody of her mother. The perusal of the impugned orders reveal that no inquiry in terms of section 17 of Guardian and Wards Act was made, as at the time of rendering decision by the courts below admittedly the minors were aged about 10, 08, 06 and 04 years respectively, and in present digital age the children of such age are so sharp and intelligent that they easily form an opinion and understanding of choice of preference of

either of the two parents. Since this court is seized with the matter under its constitutional jurisdiction having powers of corrective and supervisory in nature and under the law the custody of the minors is regulated keeping in view the welfare of the minors but not gather consideration.

5. The minors have been produced by the mother before this court today. They appear to be well dress and they stated that they are taking education in government schools and are being afforded financially by their mother. In such a situation it will not be proper to hand over the custody of minors to their father. For the reasons discussed hereinabove, this petition is allowed. The findings dated 02-11-2020 of learned Family Judge, Larkana and 24-05-2021, suffer from material illegality, irregularity and are perverse, therefore, require indulgence. In the writ jurisdiction of this court, the court has always shown restraint in exercising its supervisory powers in matters of concurrent jurisdiction but if the findings are found perverse are based upon mis-reading or non-reading of the evidence. They cannot be treated as sanctified, thus the jurisdiction under Article 199 can be exercise to enforce the rights of minors. This petition is allowed, the custody of minors is granted to the petitioner. The guardianship application No.21/2018 is dismissed with no order as to the cost. However respondent No.1, being father would be at liberty to meet the minors in the school as and when he desires.

JUDGE