



**In re GMW (Minor) (Adoption Cause 2 of 2023)  
[2024] KEHC 11644 (KLR) (Family) (26 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 11644 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**FAMILY**

**ADOPTION CAUSE 2 OF 2023**

**PM NYAUNDI, J**

**JULY 26, 2024**

**IN THE MATTER OF THE CHILDREN’S ACT 2022, LAWS OF KENYA**

**IN THE MATTER OF GMW.....MINOR**

**IN THE MATTER OF**

**BNM ..... APPLICANT**

**JUDGMENT**

1. Vide Originating Summons, dated 12th September, 2023 the Applicant BNM herein seeks the following orders,
  - i. That GNM be appointed as the Legal Guardian of GMW (Minor herein).
  - ii. That this Honourable Court do hereby issue an Order (Adoption Order) authorizing the Applicant to legally adopt the minor who will be hence forth known as GMWM
  - iii. That an Order do issue to the Registrar General to make the appropriate entry of GMWM in the Adopted Children’s Register.
  - iv. That this Honourable Court do issue an order directed at the Immigration Department for the minor to be issued with a Kenyan Passport.
  - v. That an Order to issue directing the Registrar of births and deaths to issue the minor herein with all the relevant documents evidencing her identity.
  
2. Through viva voce evidence on the online Court platform, the Applicant stated that she lives in Washington State, Seattle and she holds Dual Citizenship. The Applicant is a Nurse by Profession currently running her own nursing home in Seattle.



3. It's the Applicant's further statement that she wishes to adopt the minor herein who is her granddaughter and is 15 years of age.
4. Kinship adoption is provided for under Section 193 of the *Children Act* 2022. The minor attends school at [Particulars withheld], Kajiado and she is in form 1. The Applicant explained to her husband, children and extended family members of her intention of adopting the minor which decision they have no opposition to.
5. The Applicant adopted her statement where she averred that she is married to AKM and together they have been blessed with two biological children. The first born is JM born in 1982 and lives in Kenya. The second born is FG born in 1992 and lives in Seattle with the Applicant.
6. The Applicant asserted that she has means to provide for the child and that she understands the legal implications of an adoption order which is not reversible.
7. The Applicant further stated that her wishes are to legalize the relationship with the child through adoption to enable the child get travel documents and join her in the USA. The Applicant has further made arrangements for the child accommodation where she plans to move to a bigger house once the minor arrives.
8. It's the Applicant's averment through her filed statement that she is financially stable and able to provide fully for the child as she draws her income for sustainability from her nursing home in Seattle, she is financially stable. Additionally, the Change Trust Adoption Agency has undertaken an investigation into the suitability of the Applicant and concluded that she is fit to adopt the child.
9. JM is the biological father of the minor herein, he attended Court on the virtual platform, he gave his consent for the Applicant to adopt his daughter. He understands that adoption order is not reversal thus consented to the adoption proceedings. According to the statement, Mr. M separated with his wife in the year 2008. The Applicant is his mother.
10. CNW is the biological mother of the minor herein, she asserted that she understands the nature of an adoption order. She understands that she relinquishes her parental rights and that the order is not reversible. She confirms that she consents to the adoption.
11. The child herein (GMW) the subject of the present adoption proceedings was born to Applicant's biological son JM and CNW on 22<sup>nd</sup> October, 2008. Both her parents separated immediately after the birth of the child and are married to different spouses. The Applicant has since been the sole breadwinner and care giver of the child who refers to her as 'mum'. The child was present in Court online platform where she averred that she was aware that her grandmother BNM (Applicant herein) wishes to adopt her. She further averred that their relationship with her grandmother is good and subsequently, consented to the Adoption proceedings.
12. This being a Kinship adoption, the Applicant made legally necessary applications to be allowed to adopt the child and meets the Kinship Adoption requirements. The minor's mother and father sworn an affidavit of consent expressing their willingness for the process of this adoption to continue and to have the child adopted by the Applicant.
13. Upon an assessment and approval by Change Trust Adoption Agency, consent from the minor's parents dated 22<sup>nd</sup> March 2023, the consent from the minor, the minor was declared free for adoption by the same Adoption Society Vide a Certificate of Freeing Serial No.xxxx dated 5<sup>th</sup> May, 2023 this is Pursuant to Section 184 (1) of the *Children Act* Cap 141 of the Laws of Kenya.



14. CWK, was appointed by this Court on 12<sup>th</sup> April, 2024 this as the child's guardian ad litem, and further directing the guardian ad litem and the Director of Children's Services to investigate and file their respective reports within 45 days.
15. Pursuant to Section 102 of the Children Act 2022, the Directorate of Children Services and the Guardian Ad Litem prepared their respective reports. Winfred Ikinya Assistant Director, Directorate of Children Services presented report prepared by her colleague, Caroline Olilo. The report dated 6<sup>th</sup> May, 2024 is positive and recommends the adoption..
16. The proposed legal guardian, GNM (Applicant's sister in law) attended court, she averred that she lives in Boston, USA where she works as a mental health worker. She further averred that the minor's biological mother is her niece and thus consented to the adoption proceedings. She further stated that this being a Kinship Adoption it will be in the best interest of the minor since the Applicant has met the legal requirements as provided by Children Act 2022. She further stated that the Applicant has proved capable of taking on parental responsibility over the child in this matter who has been under the Applicant continuous care and control. The child has strongly bonded with the adoptive Applicant, hence recommended for the best interest of the minor.
17. Another favourable Report was filed by the guardian ad litem, CWK pursuant to Section 188 of the Children Act Cap 141 of the Laws of Kenya, in which she stated that the Applicant has richly shown parental commitment and willingness to continually support the child. She also stated that the Applicant wants the best for the child therefore acknowledged that the Applicant will educate the child to the highest level. CWK also noted that the Applicant has created a strong bond with the child and it will be in the best interest of the minor therefore recommended the adoption of the minor.
18. It was evidence from the Court that GNM (the Legal Guardian) consented to the Adoption order and she is prepared to assume parental responsibilities should circumstances require.
19. In addition, other Statutory Reports filed stated that the Applicant is financially and emotionally capable of providing the child with care, protection and education. She has no criminal record. This Court has evaluated the facts of this adoption. It is evident that the Applicant has fulfilled all the legal requirements relative to the adoption of the child.
20. This Court observed the Applicant with the minor in Court and it was evident that in the period that the Applicant has had the custody of the child, the child has bonded well with the her. Thorough online Court platform, Grace Mbugua (Applicant's sister) stated that she has been living with the child for almost 15 years and she has consented to the adoption proceedings.
21. The consent of the biological parents of the child was dispensed through their written consent. This Court has satisfied itself that the Applicant is qualified and able to take care of the child.
22. After carefully assessing the records herein, I am satisfied that the Applicant has fulfilled all the legal requirements relating to the Child's adoption. Section 186 of the Children Act, 2022 provides. The court may make an adoption order on application by-
  - (1)
    - (a) Sole applicant; or
    - (b) Two spouses jointly.
  - (2) The court shall not make an adoption order in any case unless-



- i. the applicant has attained the age of twenty-five years, but is not above the age of sixty-five years; and
    - ii. The applicant, or both of the applicants in a joint application, is more than twenty-one years older than the child.
  - (3) The restrictions in subsection (2) shall not apply in any case where a sole applicant or one of the joint applicants is the mother, father, or relative of the child.
19. This Court is alive to the Jurisdiction of the High Court vide Article 165 of *the Constitution* of Kenya 2010 and Section 183(1) *Children Act* 2022. The Court is conscious of the law; Article 53 Constitution of Kenya 2010, Section 8 of *Children Act* 2022 and the United Nations Convention on the Rights of the Child & African Charter on the Rights & Welfare of the Child all amplify on the best interests of the child.

### **Determination**

20. On the basis of a careful examination of the documents presented before me as well as the observations made therein, this Court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicant.
21. Accordingly, I allow the prayers sought in the Application dated 23<sup>rd</sup> August, 2023 and order as follows:
- i. The Applicant BNM is hereby allowed to adopt GMW (A Child).
  - ii. Henceforth, the child shall be known as GMWM.
  - iii. Her date of birth shall be 22<sup>nd</sup> October, 2008.
  - iv. She is presumed to be a citizen of Kenya by birth.
  - v. GNM shall be the Legal Guardian of the child.
  - vi. The Registrar General to enter this order in the Adoption Register.
  - vii. The Director Immigration is authorized to issue the child with a Kenyan Passport.
  - viii. The Guardian Ad litem is discharged.

It is so ordered.

**DELIVERED DATED & SIGNED IN OPEN COURT ON 26<sup>TH</sup> JULY, 2024.**

**P. NYAUNDI**

**JUDGE**

In presence of: -

Fardosa Court Assistant

