



**In re SM (Minor) (Adoption Cause E088 of 2024)
[2024] KEHC 9275 (KLR) (Family) (26 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 9275 (KLR)

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

FAMILY

ADOPTION CAUSE E088 OF 2024

H NAMISI, J

JULY 26, 2024

IN THE MATTER OF THE CHILDREN ACT, CAP 141 OF THE LAWS OF KENYA

AND

IN THE MATTER OF SM (MINOR)

AND

IN THE MATTER OF AN APPLICATION FOR KINSHIP ADOPTION

IN THE MATTER OF

MWG 1ST APPLICANT

MNW 2ND APPLICANT

JUDGMENT

1. Before this Court is the Originating Summons dated 15th March 2024, Statement in Support of the Application for an Adoption Order and Affidavit in Support of the Application, seeking:
 - i. That JGM be appointed as Guardian Ad Litem of the Minor, S.M;
 - ii. That AMG be appointed as Legal Guardian of the minor S.M;
 - iii. That the Applicants be authorised to legally adopt SM who will be known as SM;
 - iv. That the Registrar General be directed to enter this adoption in the Adoption Register;
2. The matter was canvassed by way of viva voce evidence on the virtual platform on 27th June 2024.



The Child

3. The child (male) was born on 7th September 2008. His Certificate of Birth is annexed to the Originating Summons. He was born to S.M.M and J.W.N. He is currently 15 years. The child attends (Particulars withheld) Boys Secondary School, where he is enrolled in Form 2. He resides with his biological parents. The child knows the Applicants; the 2nd Applicant is his sister.
4. The child was declared free for adoption vide Certificate serial number 895 issued by KKPI Adoption Society, a registered adoption agency. Equally, the child signed a consent dated 6th April 2024. The child stated that he understood the implications of the court order and was excited to move to the USA with his sister, the 2nd Applicant.

The Applicant

5. The Applicants are a married couple, who got married on 16th August 2017. They both reside in (Particulars withheld) in the USA. The 1st Applicant is a dual citizen of Kenya and the US, while the 2nd Applicant is a permanent resident of the USA. They have attached copies of their respective national identity cards. (Annexure MWG and MWN-1). The 2nd Applicant is the biological sister of the child herein, while the 1st Applicant is his brother-in-law, hence this adoption application is provided for under section 193 of the [Children Act](#). The Applicants have one biological child aged 6 years.
6. Whilst the 1st Applicant is aged 36 years old, the 2nd Applicant is 31 years old. Pursuant to the provisions of Section 186 (3) of the [Children Act](#), the proposed kinship adoption would be lawful.
7. Both Applicants work in the USA as nurses and have annexed copies of letters from their employers as well as copies of payslips (Annexure MWG and MNW -3). In their Statement, they indicate that despite residing in the USA, they have always maintained a close relationship with the child. When they are in Kenya, they spend a considerable amount of time with the child.
8. The Applicants stated that they have been providing for the child's needs since the child's biological parents are aged. The Applicants' motivation for adopting the child is captured at paragraphs 17 and 20 of their undated Statement as follows:
 - “ 17. That the minor's biological parents are of age. That we have shown an interest in adopting the minor in order to give him a better life and opportunities in order for the minor to reach his full potential.
 20. That we work for gain out of the country; we are both nurses and we would like to adopt the minor so that he can join our family in Arizona, we would like to bring up the minor in a loving family and home, instil positive values and virtues for his wellbeing and to bring him up to be a successful and responsible member of our society.”
9. The Applicants are both devoted Christians and stated their desire to bring up the child in a Christian environment, teaching him Christian values and ethics.
10. The Applicants confirmed that they fully understand the legal implications of the Adoption Order.
11. Additionally, pursuant to section 195 of the Act, the Applicants provided letter of consent dated 15th March 2024 from A.M.G, a brother to the 1st Applicant, agreeing to be appointed as the legal guardian of the child in the event that anything untoward happens to the Applicants.



The Biological Parents

12. The biological father, SMM, resides in Nairobi and ekes a living as a businessman. The child herein is his youngest child. He confirmed that he fully understood the implications of an Adoption Order.
13. J.W.M, the biological mother, resides in Nairobi and is a housewife. Together with SMM, they have 4 biological children, the child herein being the last born. She stated that the Applicants have been supporting the child financially since she is unable to do so. She fully understands the implications of an Adoption order and that the same is irreversible.
14. Both biological parents gave their written consent dated 24th February 2024.

The Adoption Approval Process

15. KKPI Adoption Agency conducted an assessment of the Applicants and sought the consent of the biological parents, the minor as well as members of the extended family. The extended family is supportive towards the adoption. The Agency filed its report dated 31st January 2024 recommending the adoption of the child.
16. On 13th May 2024, the Court issued an order appointing Joseph Gitau Mwamba as the minor's Guardian ad Litem, and further directing the Guardian ad Litem and Director of Children's Services to investigate the suitability and fitness of the Applicant and subsequently file their respective reports within 30 days.
17. The Guardian ad Litem filed his report dated 30th May 2024, noting that the Applicants' home environment is suitable and conducive to raising the child and that the child has established strong and positive connection with the Applicants who are also his relatives. The Directorate of Children's Services, Nairobi County filed its report dated 20th May 2024, noting that this is a kinship adoption where the child will not change his kinship ties and recommending the adoption of the child by the Applicants herein.
18. Section 193(1) of the *Children Act* provides that kinship adoption order may only be made in favor of a relative of the child. In this instance, the Applicants are brother-in-law and biological sister to the child, respectively.
19. In view of the foregoing, the court is satisfied that:
 - i. The proposed adoption is a kinship adoption, meaning that the child will continue to be within the family.
 - ii. The adoption will be in the best interest of the child; and
 - iii. The Applicants have been approved as a prospective adoptive parent by competent social workers through a duly registered Adoption Society under the Department of Children Services, thus they are able to effectively handle their parental responsibilities
20. Accordingly, the Originating Summons is allowed and the following orders are hereby issued:
 - i. The Applicants, M.W.G and M.N.W, are hereby authorised to adopt the child currently known as S.M;
 - ii. The Registrar General is directed to enter this Order in the Adopted Children's Register and to issue a Certificate to that effect;
 - iii. The Guardian ad Litem is hereby discharged;



iv. That A.M.G is hereby appointed as the legal guardian of the child S.M.

DATED AND DELIVERED AT NAIROBI THIS 26 DAY OF JULY 2024

HELENE R. NAMISI

JUDGE

Delivered on a virtual platform in the presence of

Ms. Achiengfor the Applicant

