



**In re GT (Minor) (Adoption Cause E118 of 2024)  
[2024] KEHC 13909 (KLR) (Family) (16 August 2024) (Judgment)**

Neutral citation: [2024] KEHC 13909 (KLR)

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

**FAMILY**

**ADOPTION CAUSE E118 OF 2024**

**BK NJOROGE, J**

**AUGUST 16, 2024**

**IN THE MATTER OF CHILDREN ACT (ACT NO. 29 OF 2022)**

**AND**

**IN THE MATTER OF GT (MINOR)**

**AND**

**IN THE MATTER OF AN APPLICATION FOR KINSHIP ADOPTION**

**IN THE MATTER OF**

**SKS ..... 1<sup>ST</sup> APPLICANT**

**LAS ..... 2<sup>ND</sup> APPLICANT**

**JUDGMENT**

1. This is an Adoption Application by SKGLS the 1<sup>st</sup> Applicant and LAS the 2<sup>nd</sup> Applicant. They jointly presented an Originating Summons dated 20<sup>th</sup> May, 2024. It is supported by the Joint Statement of the Applicants dated the 20<sup>th</sup> May, 2023 as well as the Affidavit of the Applicants sworn on 20<sup>th</sup> may, 2024. It seeks the following orders.
  - i. That the Applicants, SKGLS and LAS be authorised to adopt the child currently identified as GT.
  - ii. That henceforth, the child be renamed GTL.
  - iii. That JKL and KSA be appointed as Legal Guardian of the child, in the event that the Applicants herein are incapacitated or in any way unable to discharge their parental obligations.



- iv. That the Guardian Ad Litem be discharged.
  - v. That the Registrar General be directed to make the appropriate entries in the adopted Children's Register and issue a Certificate to that effect.
  - vi. That the relevant department under the Civil Registration Services be directed to issue a post-adoption Certificate of Birth in respect of the child.
  - vii. That the Director of Immigration be authorised to issue a Passport to the Child.
  - viii. That this Court do issue such further orders as are in the interest of justice.
2. At the preliminary hearing on 6<sup>th</sup> June, 2024 Jackson Ndegwa was appointed as the Guardian Ad Litem and he subsequently filed the Guardian Ad Litem's Report dated 11<sup>th</sup> June, 2024.
  3. The Court also notes that the Director of Children Services has filed a Statutory Report dated 11<sup>th</sup> June, 2024.
  4. This matter came up for hearing on 11<sup>th</sup> July, 2024. The 1<sup>st</sup> Applicant aged 72 years works as an Attendant Counsellor at [particulars withheld] School, Olympia in USA. The 2<sup>nd</sup> Applicant aged 67 is a Healthcare Provider at [particulars withheld] Home in USA. The Joint Applicants own a home at Kitale in the County of Trans-Nzioa and also Marysville, Washington, USA.
  5. The Joint Applicants testified that they are married. They got married on 6<sup>th</sup> August, 1978 at Friends Church in Kakamega. They have a marriage certificate serial number 28XX36. This is a Christian marriage hence monogamous.
  6. They expressed their desire to jointly adopt GT, whom they wish to name GTL. The Joint Applicants are the biological Grandparents of the Child. Their daughter IBL is the birth mother to the Child. The Child's birth father is said to be deceased. He did not participate in raising up the Child and they have never met. His name does not appear on the Child's birth certificate serial number A08XXX62 dated 13<sup>th</sup> November, 2018. The Child was born on 2<sup>nd</sup> October, 2008. The birth mother has six children in total. She is raising them as a single parent. The Child the subject matter of this proceedings is partially orphaned, hence lacking a father figure in his life. The Applicants as his Grandparents have opted to step in and take up the roles of parents. They wish to give the Child a better life in USA. The 1<sup>st</sup> Applicant will step up to the roles left vacant by the absentee father.
  7. The Joint Applicants understand the irrevocable nature and permanency of an adoption order. They are also aware of the rights or inheritance of the child. Specifically, the Joint Applicants are fully aware that they will acquire all parental rights over the child. In turn, the child has the rights of inheritance over their property.
  8. The Joint Applicants' daughter, IBL is equally aware of the effects of an Adoption order. She appeared in Court virtually and confirmed that she has given her consent to the Adoptions.
  9. The Child the subject matter of this proceedings is the second born child of IBL Applicant. She got this child out of wedlock and has never married.
  10. Buckner Kenya Adoption Services issued a certificate declaring the child free for Adoption, Serial Number 00744 dated 14<sup>th</sup> March, 2024. This is pursuant to Section 184 (1) (a) of the *Children Act* Cap 141 of the Laws of Kenya.



11. The Joint Applicants were assessed by Buckner Kenya Adoption Services an adoption society and approved by its case committee for Adoption on 4<sup>th</sup> March, 2024. The child lives with the birth parent but is expected to join the Joint Applicants and relocate to USA.
12. His biological siblings have given their consents signifying that they understand the process. The Joint Applicants children have also given their consents to the adoption.
13. The Report of the Guardian Ad Litem Jackson Ndegwa Wanjohi dated 11<sup>th</sup> June, 2024 favours the adoption. He noted that the Child has adjusted well and is ready for this Kinship adoption. He appeared in Court virtually to present his Report.
14. The proposed Legal Guardians JKL and SAK. They are a son and daughter in law of the Joint Applicants. They are married to each other. They have both consented to being appointed as the Legal Guardians and that they understand the effects of such an order. JKL appeared in Court virtually and confirmed together with the wife they were still keen to be appointed as Legal Guardians to the child.
15. IBL the child's birth mother also appeared in Court virtually. She confirmed that she had given the child for adoption to her own parents.
16. Alexander Malala Libendi a representative of Buckner Kenya Adoption Services also attended Court virtually to confirm that the adoption process met the requirements of the Law. The Society approves the adoption as being in the best interests of the child. He confirmed that a Certificate freeing up the Child for Adoption had been issued.
17. Finally, Winfred Ikinya the Principal Children Officer appeared in Court and adopted the Report dated 11<sup>th</sup> June, 2024 prepared by Ezekiel Kimani and countersigned by Mary Atati for the Assistant Director Children's Services. She recommended the adoption.
18. The Court observed the Joint Applicants as well as the Child during the hearing and noted that this is a Kinship Adoption. The Joint Applicants are the Grandparents of the child. Hence this is an adoption within the family setting, though the Joint Applicants reside in the United States of America, they also have a residence in Kenya and hence this is not an inter Country adoption. The Child is 16 years old and understands the nature of the orders sought herein as well as the adoption and has consented to the same. His siblings have also consented to the adoption. So have his uncles and aunties who are the children of the Joint Applicants.
19. The Joint Applicants have demonstrated their financial capacity to take care of the child. They are in good health. They have no criminal records as witness their Police Clearance Certificates Ref PCC-V5TE8RLY dated 1<sup>st</sup> February, 2024 (for 1<sup>st</sup> Applicant) and PCC-OLT6RZ65 dated 24<sup>th</sup> January, 2024 (for 2<sup>nd</sup> Applicant).
20. The Court has taken note that the 1<sup>st</sup> Applicant is 72 years of age while the 2<sup>nd</sup> Applicant is 62 years of age. The statutory age limit for adoptions for Applicants is set at 65 years. Section 186 of the *Children Act* Cap 141 states as follows'

“ 186. Who may apply to adopt a child?

1. The Court may make an adoption order on application by;
  - a. A sole applicant; or
  - b. Two spouses jointly
2. The Court shall not make an adoption order in any case unless;



- a. The Applicant has attained the age of twenty-five years, but is not above the age of sixty-five years; and
    - b. 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.
  4. The Court shall not make an adoption order in favour of a sole male applicant, unless the applicant is a blood relative of the child.
  5. The Court shall not make an adoption order in favour of the following persons unless the Court is satisfied on reasons to be stated on the record that there are special circumstances that warrant the making of the adoption order an applicant or joint applicants who has, or both have, attained the age of sixty-five years.”
21. The Court notes that in a Kinship Adoption, the Child remains still very much part of the family. The adoption will provide the child with benefits that may not readily accrue from the birth mother. He has an opportunity to live with the Joint Applicants abroad. He may benefit from the access to education, health, housing, the job opportunities etc. He now has a right to inherit. Also, an access to a stable home as well as a chance to pursue his dreams. To this Court notwithstanding that the Joint Applicants are advanced in age, the adoption works out in the best interests of the Child. In as much as death is inevitable, the medical records produced do not give any indication that the Joint Applicants intend to depart from the earthly jurisdiction anytime soon. Perhaps the adoption and a teenage child in their life will give them a new zest in life. A desire to live longer and see the child well into adulthood.
22. The Joint Applicants are not first-time parents. They have brought up seven other children. They should use such skills acquired over the years to bring up this child. The above reasons constitute sufficient grounds to warrant the Court to allow the adoption, notwithstanding the fact that the Joint Applicants are above the statutory age of 65 years.
23. The Court has taken note of the Statutory Reports filed regarding this Adoption all which favour the adoption.
24. The Court has considered all the facts presented in the adoption proceedings as well as evaluate the Reports and testimonies of all those parties who attended the virtual hearing on 11<sup>th</sup> June, 2024.
25. The Court is alive to its jurisdiction under Article 165 and 53 of the *Constitution* of Kenya Section 183 (1) of the *Children Act*. The Court has considered Section 8 of the *Children Act*, the United Nations Convention on the Rights of the child and the African Charter of the Rights of the Welfare of the Child.
26. This is a Kinship Adoption pursuant to Section 193 (1) of the *Children Act*. The guiding principle remains in the best interests of the child pursuant to Section 8 and 194 (1) (c) of the *Children Act*.
27. The Child is a Kenyan Citizen by birth.



28. The orders sought are merited in the circumstances.
29. The Court is persuaded that the adoption will provide the Child with a safe, permanent home and loving environment and hence is in the best interest of the child.

**Determination**

30. The Court makes the following orders;
  - a. That the Joint Applicants SKGLS and LAS be authorised to adopt the child currently identified as GT.
  - b. That henceforth, the child be renamed GTL.
  - c. That JKL and KSA be appointed as Legal Guardians of the child, in the event that the Applicants herein are incapacitated or in any way unable to discharge their parental obligations.
  - d. That the Guardian Ad Litem be discharged.
  - e. That the Registrar General be directed to make the appropriate entries in the Adopted Children's Register and issue a Certificate to that effect.
  - f. That the relevant department under the Civil Registration Services be directed to issue a post-adoption Certificate of Birth in respect of the Child.
  - g. That the Directorate of Immigration Services be directed to issue a Passport to the Child.
31. It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 16<sup>TH</sup> DAY OF AUGUST, 2024.**

**NJOROGE BENJAMIN. K**

**JUDGE**

**In the presence of: -**

Miss Kimenyi for the Applicant

Court Assistant – Luyai

