



**In re the Child RK (Adoption Cause E096 of 2024)
[2024] KEHC 10222 (KLR) (Family) (13 August 2024) (Judgment)**

Neutral citation: [2024] KEHC 10222 (KLR)

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

FAMILY

ADOPTION CAUSE E096 OF 2024

BM MUSYOKI, J

AUGUST 13, 2024

IN THE MATTER OF CHILD RK

IN THE MATTER OF

RGG 1ST APPLICANT

DLMG 2ND APPLICANT

JUDGMENT

1. The 1st applicant is a maternal uncle to the child while the 2nd applicant is wife to the 1st applicant. This is therefore a kinship adoption. I have made this statement because I have noted that the applicants are aged 32 and 33 years respectively whereas the child is aged 15. That means that the restriction of age difference between the applicants and the child herein does not, by virtue of provisions of Section 186(3) of the *Children Act* apply.
2. The child was born to DAG and EO on 16-07-2008. This court was told by the mother of the child that the father of the child has never been in the life of the child since she was born. The child’s mother said that she fully depends on the applicants for the upkeep and maintenance of the child. The child’s mother gave out the child for adoption through Change Trust. Upon inquiries, the said Change Trust declared the child free for adoption on 2-02-2024 and issued a certificate to that effect serial number xxxxx. The certificate was produced in court by Lizzie M. Agala.
3. The applicants testified separately and told the court that they understood the effect of an adoption order. They said that they are aware that once the adoption order is issued, the same is irreversible and gives the child the rights like those of their biological children which includes the right to inherit them. Their motivation for this adoption was their desire to give the child a better life. It was their evidence that they have been supporting the child for long and have had a good rapport with her. It was the applicants’ intention to continue supporting the child in her education and all other needs in life. The



- 1st applicant is a Kenyan citizen whereas the 2nd applicant is an American. The applicants produced evidence to show that they were financially stable and were able to support the child.
4. The mother of the child appeared in court and confirmed that she had given consent to the applicants to adopt the child. She affirmed that she has never met the biological father of the child for over ten years. She confirmed that the applicants have been supporting the child in the absence of the father. It was her evidence that she was not able to sustain the child. It was her position that the child can have a better future in the hands of the applicants and she willingly gave her away to enable the child have a brighter future than she could give her. This was because she had two other children who were taking a toll on her resources. Her written consent dated 18-04-2024 is part of the court record.
 5. When asked by this court about the whereabouts of the father of the child, D stated that she has never seen him for more than ten years although she was aware that he hailed from Kisumu County. She added that they were never married. She confirmed that she will be responsible for the child's upkeep and responsibilities in case the adopting parents are incapable or not available for the child. In other words, she has consented and is willing to act as the Legal Guardian of the child.
 6. Harriet Kihara is a Principal Children Officer working in the Department of Children Services. She told the court that the department carried out inquiries on the suitability of the applicants in adopting the child. From the interview conducted by the department, they found the applicants fit to adopt the child and proceeded to recommend that the adoption orders be granted. She however admitted that they did not visit the home of the applicants but interviewed them online.
 7. The child also testified. She told the court that she knew the applicants as her uncle and aunt. She confirmed that they have been supporting her for long and she was aware that the current proceedings were about the applicants adopting her. She stated that she had no objection to the adoption and she had consented without any pressure. She was also aware that the adoption order once given is not reversible. She added that whenever the applicants are in the country, they visit and spend time with her.
 8. Lizzie Mbogo Agala from Change Trust confirmed that the applicants were their clients. She stated that they interviewed the applicants in respect of this particular matter and the outcome thereof reduced into a report dated 2-02-2024. She produced the report which was positive in that it recommended and approved that the applicants be allowed to adopt the child herein.
 9. SKW an advocate of the High Court of Kenya was on 2-05-2024 appointed as the Guardian Ad Litem in this matter. He stated that he knew the 1st applicant since their secondary school days in [Particulars withheld] High School. He upon appointment conducted his duties and prepared a report on the suitability of the applicants and wellbeing of the child. He testified that he had interacted with the child and he found her to be happy and very interested in being adopted by the applicants. He produced his report dated 28-05-2024 in which he recommends the adoption.
 10. Having gone through the reports indicated above and having listened to the witnesses herein especially the applicants and the child, I have no doubt that this is a good case to grant. The child is known to the applicants for a long time. She is the 1st applicant's niece meaning that none of them is a stranger to the other. The child is fifteen years and able to know what is good for her. She attends school and she has shown interest in pursuing more studies. This being a kinship adoption, the child will still remain within the family. Better still, the appointed Legal Guardian is the child's mother who has given her out for adoption to her brother. This can only mean that the adoption herein is not for the applicant's or the mother's benefit but the desire to give the child a better future. With that kind of arrangement, the family ties remain stronger if not stronger than before.



11. On the other hand, the biological father cannot be traced. The only known details of him is that he hailed from Kisumu County. He has been an absentee father right after the child was born. He has not been in the child's life. He has never made any contribution to her growth or development. Instead, he left his parental responsibilities to the mother and other maternal relatives. Obviously, he must have moved on with his life if he is still living.
12. In my opinion, the requirement of consent of the biological parent under Section 186(8)(a) of the Children Act, Chapter 141 of the Laws of Kenya is to ensure that the rights of the parents are not violated and ensure that they are given a chance or right of say in their children's affairs. The requirement is not meant to be a barrier or an obstacle to enhancing and promoting the rights and welfare of the child. Parents' rights accrue to those who are available and concerned about their children. An absentee parent has no right to stand on the way when the child's welfare is being enhanced and promoted by others. In the circumstances, I have no hesitation in dispensing with the consent of the biological father of the child under Section 189(1)(a) of the Children's Act Chapter 141 of the Laws of Kenya.
13. In view of the above, I am convinced that it will be in the best interest of the child that this adoption be allowed. I consequently allow the originating summons dated 18th April 2024 in the following terms;
 1. The consent of the child's biological father is hereby dispensed with.
 2. RGG and Dominique LMG are hereby allowed to adopt R K.
 3. The child's name shall remain RK.
 4. DAG is appointed as the Legal Guardian of the child.
 5. The Guardian Ad Litem is discharged.
 6. The Registrar General is directed to enter this adoption in the register of adoptions.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 13TH DAY OF AUGUST 2024.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT.

Judgment delivered in presence of Mr. Festus Onyango holding for Miss Mwai for the applicants.

