



REPUBLIC OF KENYA



KENYA LAW
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**In re NAW (Minor) (Adoption Cause E063 of 2024)
[2024] KEHC 11294 (KLR) (Family) (26 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 11294 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E063 OF 2024
CJ KENDAGOR, J
SEPTEMBER 26, 2024
IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF THE LAWS OF KENYA
AND
IN THE MATTER OF ADOPTION OF BABY NAW (MINOR)
IN THE MATTER OF
AWM APPLICANT

JUDGMENT

1. Before this Court is the application dated 1st March, 2024. The Applicant AWM is seeking to be authorized to adopt NAW, hereinafter referred to as the child, and upon adoption, the child is to be known as NAW. INM be appointed as the child's legal guardian upon granting of the adoption orders.
2. The Applicant holds dual citizenship for Kenya and Canada, as evidenced by the Kenyan National Identity Card and Canadian Passport. The financial statements support the Applicant's ability to provide for the child. Medical reports confirm that her health is good, and a Certificate of Good Conduct issued by the Directorate of Criminal Investigations verifies that she has no previous criminal records. She has indicated that she would like to legalize the relationship between the child and NAW through kinship adoption to enable access to education, good life and family stability.
3. The Report from the Ministry of Labour and Social Protection State Department of Social Protection - Directorate of Children's Services (Nairobi County) dated 1st July, 2024 indicates that the child is female and 12 years old having been born on 2nd December, 2011. She is Kenyan, born to DKM and AMG. AWM (Applicant) is the biological mother of DKM and the grandmother to the child. DMK and AMG signed parental consent on adoption dated 1st August, 2024 giving consent for their child to be adopted by the grandmother. The child was declared free for adoption by KKPI Adoption society on 16th February, 2024 vide freeing Certificate Serial Number 796.



4. The child is a Kenyan citizen by virtue of Article 14 (1) which provides that a person is a citizen by birth if on the day of the person's birth, whether or not the person is born in Kenya, either the mother or father of the person is a citizen.
5. In light of the best interests of the child principle provided for under Article 53 (2) of the Constitution of Kenya, 2010. Sections 8 (1), (2) and (3) of the Children's Act No 29 of 2022 and the 1st Schedule of the Children's Act No 29 of 2022, this Court must prioritize the child's best interests in making decisions touching on her.
 - a. Article 53 of the Constitution, 2010 states that a child's best interests are of paramount importance in every matter concerning the child.
 - b. Sections 8 (1), (2) and (3) of the Children's Act No 29 of 2022 provides as follows;
 1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies:
 - a. The best interests of the child shall be the primary consideration;
 - b. The best interests of the child shall include, but shall not be limited to the considerations set out in the First Schedule.
 2. All judicial and administrative institutions, and all persons acting in the name of such institutions, when exercising any powers conferred under this Act or any other written law, shall treat the interests of the child as the first and paramount consideration to the extent that this is consistent with adopting a course of action calculated to:-
 - a. safeguard and promote the rights and welfare of the child;
 - b. conserve and promote the welfare of the child; and
 - c. secure for the child such guidance and correction as is necessary for the welfare of the child, and in public interest.
 3. In any matters affecting a child, the child shall be accorded an opportunity to express their opinion, and that opinion shall be taken into account in appropriate cases, having regard to the child's age and degree of maturity.
 - c. The First Schedule as provided for under Section 8 (1) of the Children's Act No 29 of 2022 provides best interests considerations to be as follows:
 1. The age, maturity, stage of development, gender, background and any other relevant characteristics of the child.
 2. Distinct special needs (if any) arising from chronic ailment or disability.
 3. The relationship of the child with the child's parent (s) and/ or guardian(s) and any other persons who may significantly affect the child's welfare.
 4. The preference of the child, if old enough to express a meaningful preference.
 5. The duration and adequacy of the child's current living arrangements and the desirability of maintaining continuity.
 6. The stability of any proposed living arrangements for the child.



7. The motivation of the parties involved and their capacities to give the child love, affection and guidance.
 8. The child's adjustment to the child's present home, school and community.
 9. The capacity of each parent or guardian to allow and encourage frequent and continuing contact between the child and the other parent and/or guardian (s), including physical access.
 10. The capacity of each parent and/or guardian (s) to cooperate or to learn to cooperate in child care.
 11. Methods for assisting parental and/or guardian cooperation and resolving disputes and each parent's/guardian's willingness to use those methods.
 12. The effect of the child if one parent/guardian has sole authority over the child's upbringing.
 13. The existence of domestic abuse between the parents/guardian(s), in the past or currently, and how that abuse affects the emotional stability and physical safety of the child.
 14. The existence of any history of child abuse by a parent and/or guardian(s); or anyone residing in the same dwelling as the child.
 15. Where the child is under one year of age, whether the child is being breast-fed.
 16. The existence of a parent's(s) or guardian's(s) conviction for a sex offense or a sexually violent offense under the *Sexual Offences Act*.
 17. Where there is a person residing with a parent or guardian, whether that person; -
 - a. Has been convicted of a crime under this Act, the *Sexual Offences Act*, the Penal Code or any other legislation.
 - b. Has been adjudicated of a juvenile offence which, if the person had been an adult at the time of the offence, the person would have been convicted of a felony.
 18. Any other factor which may have a direct or indirect effect on the physical and psychological well-being of the child.
6. The report from the Ministry of Labour and Social Protection State Department of Social Protection - Directorate of Children's Services (Nairobi County), the report from KKPI Adoption Services, the guardian *ad litem* and the proposed legal guardian indicate that the child will be well taken care of in the care and custody of the adoptive parent.
 7. The Applicant desires the minor to join her in Canada once the process is successfully completed.
 8. Regarding a moratorium that was issued regarding international adoptions, in the case of *In re R.N.W. (minor)* [2019] eKLR, the Court held as follows:
 - " 11. This is a kinship adoption as the applicant is related to the child since the child's biological mother was a cousin of the Applicant."



9. *In re J.N.A.* [2018] eKLR, the Court held that:-

“The indefinite moratorium issued by the Kenyan cabinet on 27th November, 2014 involved inter-country and resident adoptions of Kenyan children by foreigners. It does not affect adoptions by Kenya applicants, even those living abroad. Dual citizenship in our country is anchored in Article 16 of the Kenyan Constitution. According to the Guidelines for Alternative Family Care of Children in Kenya page 153, “kinship adoption is adoption by adopters who are kin or relatives within the extended family of the child.” Kenyans living abroad and wishing to adopt a Kenyan child will adopt as Kenyans by way of domestic adoptions. This is therefore considered to be a local adoption.”

10. This Court is satisfied that, in the present case, this is a kinship adoption and is also a local or domestic adoption. The Court is also satisfied that the Applicant is a suitable person with the demonstrated financial and social means to provide and care for the minor and has, in any event, been doing so for a considerable period before making this application. During my interview with the child, I formed the view that the minor and the Applicant share a close bond. She expressly confirmed to the Court her eagerness to be adopted by her grandmother.

11. This adoption gives the child a chance at a better life and education. In the circumstances, I allow the originating summons dated 1st March, 2024 and make the following orders:

- a. The Applicant AWN be authorized to adopt the child known as NAW.
- b. Upon adoption, the child shall be known as NAW.
- c. The child is declared a Kenyan citizen by birth and is entitled to all rights and benefits under the *Constitution* of Kenya, 2010 and all applicable laws.
- d. INM is appointed as the child's legal guardian.
- e. The Registrar General is directed to make the relevant entries in the Adopted Children's Register in respect of the child.
- f. The Registrar of Births and Deaths is directed to issue a birth certificate in the new names.
- g. The guardian *ad litem* is discharged.

It is so ordered.

**DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS
ONLINE PLATFORM ON THIS 26TH DAY OF SEPTEMBER, 2024.**

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C. KENDAGOR

JUDGE

In the presence of:

Court Assistant: Beryl

