



**In re Adoption of LLA (Minor) (Adoption Cause E004 of 2024)  
[2024] KEHC 15210 (KLR) (29 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 15210 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
ADOPTION CAUSE E004 OF 2024**

**AC BETT, J**

**NOVEMBER 29, 2024**

**IN THE MATTER OF AN APPLICATION FOR ADOPTION OF LLA (MINOR)**

**IN THE MATTER OF**

**AML ..... APPLICANT**

**JUDGMENT**

1. By an Originating Summons dated 22<sup>ND</sup> April 2024, the Applicant, AML seeks to adopt a minor namely LLA.
2. In her affidavit in support of the application, the Applicant depones that she is a Kenyan citizen currently domiciled in Oslo Norway. The applicant is a health worker in Oslo-Norway. She is a dual citizen of Kenya and Norway and is aged 52 years having been born on 9<sup>th</sup> February 1972.
3. The Applicant is the maternal grandmother of the minor who was born to her daughter MSB on 1<sup>st</sup> March 2023. According to the Adoption Bundle and the Certificate of Birth No. xxxxxxxx, the father of the minor is unknown.
4. This is a kinship adoption. The Applicant works in Oslo-Norway but has a home in Kenya. She has been taking care of the minor, alongside some nieces in her house in [Particulars withheld] Estate, Municipality Division, Area of Kakamega County.
5. The Applicant stated that she is a single mother who has two children of her own. One of the two children is the minor’s mother. Both children are still students. The minor’s mother was born on 7<sup>th</sup> July 2000. The Applicant depones that she does not have a criminal record, has supported the minor since his birth and is able to take care of the minor.
6. In support of the application, the Applicant has supplied the court with her Medical Report, Confidential Referee Reports, Church Recommendation Letter, Letter from the Chief, Shieywe Location recommending the kinship adoption, and Birth Certificate of the minor and its mother.



7. A report was filed by the court appointed Guardian ad Litem in which she recommended the adoption of the minor whom she says was well settled and cared for by the Applicant. The Guardian confirmed that the child is settled for she had made several visits to the Applicant's home to confirm the status of the minor. The Guardian made this affirmation personally when she appeared in court during the hearing of the application on 6<sup>th</sup> November 2024.
8. On interviewing MSB, the biological mother of the child who had expressed her consent to the proposed adoption in writing, she said that she made the decision to surrender the minor to the Applicant for adoption voluntarily. She said she is aware of the legal implications of an adoption order. She also stated that she is aware that the Applicant has appointed ES to be the child's guardian should any misfortune beset her. ES is a cousin to the Applicant. MSB says she is aware that even if the Applicant were no longer there, it is ES who would have the legal right to make decisions concerning the minor.
9. ES was also present in court and stated that she understands the role of a guardian. She averred that she is committed to fully taking care of the minor if need arises.
10. From the evidence before the court, this is a kinship adoption and therefore the application for adoption falls under Section 185 of the [Children Act 2022](#), which states as follows:-

“Children who may be adopted

  - (1) Any child who is resident within Kenya may be adopted whether or not the child is a Kenyan citizen, or was born in Kenya.
  - (2) Without prejudice to the generality of subsection (1), no Court may entertain an application for an adoption order in respect of a child unless—
    - (a) the child concerned has been in the continuous care and control of the applicant within Kenya for a period of three consecutive months preceding the filing of the application; and
    - (b) the application for an adoption order is supported by a report made by a duly registered adoption society recommending that an adoption order be made.
  - (3) The report referred to in subsection (2)(b) shall contain the society's findings and recommendations in respect of the child and the applicant or applicants, as the case may be.
  - (4) The following children shall be eligible for adoption—
    - (a) a child who is an orphan and has no guardian or caregiver able and willing to take care of the child;
    - (b) a child who has been abandoned or whose parents' or guardian's whereabouts cannot be traced within a period of one year;
    - (c) children who are willingly offered for adoption by their biological parents in accordance with regulations made under this Part.”
11. The minor has been offered for adoption by her biological mother. The biological father is unknown as it appears that the child was conceived after a one chance encounter.



12. The Applicant is single. She is a female, aged 52 years and with children of her own. She is healthy both physically and mentally. She is more than twenty-one years older than the child although I must hasten to add that the caveat as to age is not applicable to kinship adoptions under Section 186 (3) of the Children's Act.
13. The Applicant has deponed that she has never been convicted of any criminal offence either misdemeanor or felony and has expressed the desire to adopt the child and give him a better future which entails including him in her medical insurance cover as a dependant.
14. An adoption Society, KPPI has filed a report made on 7<sup>th</sup> March 2024 and indicated that by a case committee meeting held on 24<sup>th</sup> April 2024, the committee approved the prayers by the Applicant to be allowed to adopt the child and the child was declared free for adoption.
15. In compliance with directions from the court, the Sub-County Children Officer Kakamega Central filed a report on 28<sup>th</sup> October 2024. According to him, the biological mother who also depends on the Applicant views the adoption as a way to ensure that the future of the child is secure as it will give the child whose father cannot be traced, a stable family environment. He states that a strong bond has been formed between the Applicant and the child. The Applicant was found to be financially stable and a responsible parent who can provide the child's basic needs. The Children Officer recommends the adoption as an alternative family care process that will be in the best interest of the child.
16. Article 53 (2) of *the Constitution* stipulates that in any matter concerning a child, the child's interests are of paramount importance. This provision is reiterated in Section 8 (1) of the Children's *Act, No. 29 of 2022*. Therefore, in dealing with adoption proceedings the court is enjoined to take due consideration of the aforesaid over-arching principle.
17. This court has power under Section 183 of the Act, to make an adoption order authorizing the Applicant to adopt the child.
18. As earlier stated, this is a kinship adoption and therefore the existing indefinite moratorium on foreign adoption does not apply despite the fact that the Applicant lives abroad. 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.”

In the premises, there is nothing that impedes the court from authorizing the Applicant to adopt the child who is her grandson. At her age, she is still strong enough to take care of him.

19. Having taken into consideration all the material before the court, I am satisfied that the Applicant has fulfilled the prerequisite conditions for the adoption orders to issue.
20. I therefore make the following orders:-
  - (1) The Applicant AML being the grandmother of the minor LLA is hereby authorized to adopt the minor.



- (2) ES, the Applicant's cousin is hereby appointed the legal Guardian in the event a misfortune befalls the Applicant and she is unable to discharge her parental responsibilities as a mother.
- (3) The Guardian ad Litem, JM is hereby discharged.
- (4) The Registrar General is directed to make the appropriate entries in the Adopted Children's Register.

Those are the orders of the court.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 29<sup>TH</sup> DAY OF NOVEMBER 2024.**

**A. C. BETT**

**JUDGE**

In the presence of:

No appearance for parties

Court Assistant: Polycap Mukabwa

