



REPUBLIC OF KENYA



**In re LOW (Minor) (Adoption Cause E001 of 2023)
[2023] KEHC 3237 (KLR) (31 January 2023) (Judgment)**

Neutral citation: [2023] KEHC 3237 (KLR)

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

ADOPTION CAUSE E001 OF 2023

EKO OGOLA, J

JANUARY 31, 2023

IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF THE ADOPTION OF LCW (MINOR)

AND

IN THE MATTER OF AN APPLICATION FOR KINSHIP ADOPTION BY MA

JUDGMENT

1. Before this court is the originating summons dated January 5, 2023 by which the Applicant MA prays for the following orders: -
 - a. That the Applicant MA be and is hereby authorized to adopt LCW and the child's name shall remain LCW
 - b. That AWM be and is hereby appointed as legal guardian of the child in the event a misfortune befalls the Applicant rendering her unavailable or incapable of taking care of the child.
 - c. That the child was born in Kenya of Kenyan parents and is therefore Kenyan by birth and is entitled to a Kenyan passport.
2. The Originating Summons was supported by a Statement of even date sworn by the Applicant. The matter was canvassed by way of viva voce evidence in open court.
3. CO a Children's Officer took the stand as PW1 and testified that she had assessed the Applicant and that she has no reservations to the Applicant adopting the minor.

Determination

4. I have considered the Summons before me, the evidence on record as well as the various reports filed in Court.



5. This application is one for kinship adoption because the Applicant is related to the child as her paternal aunt. (see Section 2 of the Children’s Act). A kinship adoption is a domestic adoption. In Adoption Cause 75/2017, JNA by ZOO and CAN the Court held that:-
- “According to the guidelines for alternative Family Care of Children in Kenya pg.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 adoption. This is therefore considered to be a local adoption.”
6. The prerequisites for adoption are set out in Section 156(1) of the Children Act, 2001 which stipulates as follows: -
- “159(1) No arrangement shall be commenced for the adoption of a child unless the child is at least six (6) weeks old and has been declared free for adoption by a Registered Adoption Society in accordance with the Rules prescribed in that behalf.”
7. Further to this, the requirements for kinship adoption are well set out in Part XIV of the Children Act. The conditions to be met are as follows:-
- a. The Applicant is above twenty-five years of age and below sixty-five years of age;
 - b. The Applicant is a relative of the child;
 - c. The child has been declared free for adoption;
 - d. That all the reports and evaluations conducted indicate that it is in the best interests of the child that the applicant adopts the child as demonstrated by the fact that they are family, and that the applicant has been educating and providing for the child since birth;
 - e. That the child has given her consent to being adopted by the applicant.
8. At the time when this adoption process commenced, the child was 17 years of age which is above the six (6) week age limit provided for by law. The child was declared free for adoption by Change Trust on January 20, 2023 vide a Certificate to Declare a child free for Adoption Serial Number 00545. I am satisfied that the legal prerequisites for an adoption order have been met.
9. The child was born on February 2, 2005 to his late father FW and her mother FCS. The child has three other siblings. The Applicant has been living and supporting the children since 2013. The child’s mother, FCS has given her consent for the Applicant to adopt the child. The child has also consented to be adopted by the Applicant.
10. Further to the aforementioned conditions, the Applicant is engaged in gainful employment. She is also in good health and has the potential to provide a good social and religious life to the child. The Applicant has also annexed her Certificate of Good Conduct issued by the Kenya Police Service, proving that she has no criminal antecedents in Kenya.
11. The upshot is that I allow the Originating Summons dated January 5, 2023 in the following terms:-
- a. The Applicant MA is hereby authorized to adopt the child LCW.
 - b. AWM is hereby appointed as legal guardian of the child LCW in the event the Applicant is incapacitated or in any way unable to discharge her parental obligation.



- c. The Registrar General is hereby directed to make the appropriate entries in the Adopted Children's Register.

12 It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 31ST DAY OF JANUARY 2023

E.K. OGOLA

JUDGE

In the presence of:

Mr. Waweru for the Applicant

Gisiele Muthoni Court Assistant.

