



**In re LSL (Child) (Adoption Cause E117 of 2022)
[2023] KEHC 199 (KLR) (Family) (23 January 2023) (Judgment)**

Neutral citation: [2023] KEHC 199 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E117 OF 2022
MA ODERO, J
JANUARY 23, 2023**

IN THE MATTER OF

**PKN 1ST APPLICANT
JWKN 2ND APPLICANT**

JUDGMENT

1. Before this court is the originating summons dated July 2, 2022 by which the applicants PKN and JJWKN seek the following orders:-
 - “ 1. Spent
 2. Spent
 3. That the applicants be authorized to adopt LSL alias LSL to be known as NGN.
 4. That the child be presumed to be a Kenyan citizen.
 3. That the child's date of birth be February 17, 2009 and the place of birth be Samburu.
 6. That the Registrar General be directed to enter the adoption in the adopted register.”

2. The application is supported by statement of even date sworn by the two applicants. The matter was canvassed by way of *viva voce* evidence on the virtual platform.



3. The applicants are a married couple who reside and work in Canada. They have two (2) adult sons together. The applicants now wish to adopt a girl-child aged thirteen (13) years old out of their desire to provide a needy child with a home.
4. The applicants both confirm that they fully understand the legal implications of an adoption order. They undertake to accord to the subject child all rights due to a biological child including the right of inheritance.

Analysis and Determination

5. The prerequisites which must be met before an adoption order can be made are set out in section 184 (1) (a) and (b) of the [Children's Act 2022](#) which provides as follows:-
 - “(1) A person shall not commence any arrangements for the adoption of a child unless—
 - (a) the council, in accordance with the rules, has declared the child free for adoption; and
 - (b) the child has attained the age of six weeks.”
6. The subject child was born in Samburu County on February 17, 2009. A copy of her birth certificate Serial No XXXX is annexed to the summons (Annexure ‘PJN-1’). Therefore the child is now aged thirteen (13) years old and is well above the six (6) weeks age limit provided for in the law.
7. Change Trust which is a registered adoption agency have annexed to their report dated April 7, 2022 the original copy of the certificate Serial No XXXX declaring the child free for adoption. In the circumstances, I am satisfied that the legal prerequisites for an adoption order have been met.
8. The duty of this court is to analyze the evidence on record to determine whether the applicants are suitable adoptive parents. The applicants are both Kenyan citizens. Annexed to the summons is a copy of their identity documents (Annexure ‘PJN-4’).
9. The couple got married at the [particulars withheld] Shrine in Nairobi on August 16, 1997. A copy of their marriage certificate Serial No XXXX is annexed to the summons (Annexure ‘PJN -5’).
10. The couple have two (2) biological children both sons born in April 2000 and January 2002. They have annexed the birth certificates for their two (2) children (Annexure ‘PJN 6’).
11. The applicants explained to the court that they met the subject child through their philanthropic activities with a Girls Rescue Centre in Maralal, Samburu County. That they have sponsored the child's education at [particulars withheld] Academy in Nyeri. Having formed a strong bond with the child the applicants now wish to adopt her as she has no home nor family of her own.
12. The applicants are both gainfully employed. The 1st applicant works as a realtor in Canada whilst the 2nd applicant is an administrator at Sheridan College Mississauga, Ontario. Annexed to the summons is a letter dated August 6, 2021 authored by the Human Resources Department of the College confirming that the 1st applicant is an employee of the college.
13. Together the applicants realize a joint monthly income Kshs 3.0 million which is more than sufficient to enable them provide for the needs of the child.
14. The applicants are christians and intend to raise the child in the christian faith. They were both examined by a doctor and were found to be physically and mentally fit. The applicants have also



annexed clearance certificates issued to them by the Directorate of Criminal Investigations and the Mississauga, Police Department (Annexure ‘PJN-10’) confirming that neither has a criminal record.

15. The applicants informed the court that their extended families are aware of and support the intention to adopt the subject child. The applicants two (2) sons Austin Ngobia and Lennie Maina both testified online. They confirmed that they both support their parents intention to adopt the child and are ready to welcome her into the family. The two sons who are both adults each confirmed that they understand the legal implications of an adoption order. The two (2) biological sons of the applicants have both signed consents dated December 7, 2022.
16. They applicants have appointed their cousin as the legal guardian for the child. The proposed legal guardian JGG has signed an affidavit dated January 24, 2022 (Annexure ‘PJN-11’) confirming her willingness to be appointed as the legal guardian for the child.
17. From the evidence availed to this court, I am satisfied that the applicants are both suitable adoptive parents.
18. The subject child was born in Samburu County on February 17, 2009. The child's biological mother one AL passed away on December 24, 2019. Annexed is a copy of the death certificate Serial No XXXX (Annexure ‘PJN-1A’). The child's biological father is unknown.
19. The child was left in the care of her stepfather’s family who chased her away on grounds that she was not one of them. The child sought refuge with an aunt but on learning of plans to marry her off at an early age escaped into the streets of Maralal Town.
20. A charitable organization known as Mary Immaculate Rescue Centre in Suguta rescued the child from the streets and took her into their centre. On January 27, 2022 the Maralal Childrens Court committed the child at the Suguta Girls Rescue Centre for Care and Attention. Thereafter on March 4, 2022 the child was released into the custody of the applicants under a foster care agreement.
21. Having been born in Samburu County in the Republic of Kenya I declare the child is a Kenyan citizen by birth and is entitled to all the rights and privileges pursuant thereto.
22. This is a child who was abandoned at a young age and left to fend for herself in the street of Maralal. The child has no parents and was only saved by the charitable organization, which came to her rescue. Given the fact of abandonment there exists no known person from whom consent for this adoption can be sought and/or obtained. I therefore waive the requirement for consent in line with section 187(1) of the [Children's Act 2022](#).
23. This was a young girl who was left all alone in the world following the demise of her mother. Her stepfather’s family rejected her and the child had no place to call home. Following her rescue from the streets the girl was placed in a rescue centre for girls. This adoption accords the child the opportunity to grow in a loving and stable home environment.
24. The applicants have known and supported the child throughout her primary education. The child knows them well and has formed a strong bond with the applicants whom she views as her parents.
25. Section 186 (8) of the [Children Act](#) 2022 provides for consent to adoption as follows:-
 - “(8) Subject to the provisions of this section, an application for an adoption order in respect of a child shall be accompanied by written consents of the following persons— (a)



(b)

a. In the case of a child who has attained the age of ten years, the child himself or herself (own emphasis)

26. I was able to see and engage with the child online. She was a cheerful, confident and very vibrant teenager who was able to express herself very well. The child confirmed to the court that she knew the applicants as the couple who have been supporting her since she was a child. The child told the court that she understands the meaning of adoption having researched the same online. She expressed her great delight to be adopted by the applicants and to become their child. The child has signed a written consent letter dated January 19, 2023.
27. A home visit was conducted on December 8, 2022. The applicants whilst in Kenya reside in a two bedroomed apartment in Westlands. In Canada the applicants reside in their own four bedroomed home in Mississauga, Ontario. The living arrangements were found to provide a suitable environment for the child.
28. Finally I am satisfied that this adoption will serve the best interests of the subject child. Accordingly, I allow this application and make the following orders:-
1. The applicants PKN and JWKN are authorized to adopt the child known as LSL alias LSL.
 2. Upon adoption the child shall be known as NGN.
 3. The Registrar General is directed to make relevant entry in the adopted children register.
 4. The child is declared to be a Kenyan citizen by birth and is entitled to all rights and privileges thereto.
 5. JGG is hereby appointed as legal guardian of the child.

DATED IN NAIROBI THIS 23RD DAY OF JANUARY, 2023.

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MAUREEN A ODERO
JUDGE

