



REPUBLIC OF KENYA



KENYA LAW
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**In re FN (Minor) (Adoption Cause E047 of 2022)
[2023] KEHC 137 (KLR) (Family) (20 January 2023) (Judgment)**

Neutral citation: [2023] KEHC 137 (KLR)

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

FAMILY

ADOPTION CAUSE E047 OF 2022

MA ODERO, J

JANUARY 20, 2023

**IN THE MATTER OF CHILDRENS ACT NO 8 OF 2001
IN THE MATTER OF APPLICATION FOR ADTOPTION**

BY KEFAH MACHUKA MOGERE & MILLICENT

NYABOKE SWANYA

IN THE MATTER OF ADOPTION OF BABY FAITH

NYABOKE (MINOR)

BY

IN THE MATTER OF

KMM 1ST APPLICANT

MNS 2ND APPLICANT

JUDGMENT

1. Before this court is the originating summons dated April 7, 2022 by which the Applicants seek the following order:-
 1. That the Applicants be and is hereby authorized to adopt F N, minor.
 2. That upon adoption the child be known as F N M.
 3. That the Registrar General be ordered to make appropriate entries in the Adopted Children's Register in respect of baby F N M.
 4. That baby F N M be considered a Kenyan Citizen.



5. That the court be pleased to make any further orders it deem necessary.”
2. The application was supported by the statement of even date sworn by the Applicants. The matter was canvassed by way of viva voce evidence on the virtual
3. The Applicants K M M and M N S are a couple who got married to each in the year 2013. The couple who are both Kenyan citizens reside in Texas, USA where they both work. Their marriage is blessed with three (3) daughters aged eight (8) years, five (5) years and three (3) years. The couple now wish to adopt a girl child who is aged thirteen (13) years old.
4. The subject child F N is related to the Applicant being a niece to the 1st Applicant. The Childs mother passed away in the year 2014. The Applicants told the court that the Childs mother on her deathbed requested them to look after her child. They now wish to honour that request by adopting the child. The Applicants further state that upon the death of the biological mother, the Childs father re-married and that the relationship between the child and her step-mother is strained.
5. The Applicants told the court that all their relatives were aware of and support their intention to adopt the child. They state that they have been providing for the upkeep and education of the child. That whenever they come home to Kenya the child resides with them in the rural home in Nyamira County.
6. The Applicants each confirm that they fully understand the legal implications of an adoption order. They both undertake to accord the child all the rights and privileges, which are due to a biological child including the right to inherit.

Analysis and Determination

7. I have considered this application, the Reports filed in court as well as all the evidence adduced in support thereto. The prerequisites for adoption are set out in Section 184 (1) of the [Children Act 2022](#) which provides –
 - “ 184(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.
 - b. the child has attained the age of six weeks.”
8. The subject child was born on February 3, 2009 as evidenced by the copy of her birth certificate Serial No. 3xxxxx4 which is annexed to the summons (Exhibit ‘1’). The child is therefore now aged thirteen (13) years old and is way above the six (6) week age limit provided for by the Law.
9. Kenya Childrens Home Adoption Society which is a registered Adoption Agency have annexed to their report Certificate Serial No 833 dated February 16, 2022 declaring the Subject child Free for Adoption. I am therefore satisfied that all the legal prerequisites for an adoption order have been met.
10. The duty of this court is to analyze the evidence to determine whether the applicant is a suitable adoptive parent. As stated earlier the Applicants are both Kenyan citizens who reside and work in the USA. They have annexed to the summons copies of their National Identify Cards (Exhibits 2 (a) and 2(b)). The couple got married to each other in Nairobi Kenya on June 2, 2013 as provided by the annexed copy of their Marriage Certificate (Exhibit 3). The couple have three (3) young daughters together. They have annexed copies of the birth certificates of their daughters (Exhibits 18 (a) and 18 (b))



11. The Applicants are both gainfully employed in the USA. The Applicant is an Electronic Technician while the 2nd Applicant is a registered nurse. They realize a joint monthly income of approximately income Kshs 1.5 million which is more than sufficient to meet the needs of four (4) young children. The Applicant have annexed copies of their payslips (Exhibits 9 (a) and 9(b)). They have also annexed copies of the bank statement for an account held by the 1st Applicant at the Community Resource Credit Union in the USA (Exhibit 10). All in all I am satisfied that the Applicants are financially secure.
12. The Applicants are both Christians and intend to raise the child in the Christian faith. The reports indicate that the couple have established a foundation in Kenya by which they have educated several needy children. Annexed to the summons is a letter of recommendation dated January 5, 2022 written by the Chironge PAG Church. The Applicants were both examined by a doctor and were found to be both mentally and physically fit. They have also annexed clearance certificates issued by the Directorate of Criminal Investigations confirming that neither has a criminal record (Exhibits 8(a) and 8 (b)).
13. The Applicants have explained that the Subject child is a niece to the 1st Applicant being the daughter of his first cousin. The Childs mother who passed away in the year 2011, on her deathbed requested the couple to look after her child. The Applicants wish to honour that request by adopting the child. A copy of the Death Certificate of the Childs mother is annexed to the summons (Annexure 13(b)). They state that they have been meeting the education costs for the minor and that the child lives with them whenever they come to Kenya.
14. The Applicants told the court that the Childs father is ailing and is not in a position to provide for the child. They confirm that the entire family are in support of the adoption.
15. The Applicants have appointed J S O and J K K as the legal Guardians for the child. The proposed legal Guardians have each signed a consent dated April 7, 2022 indicating their willingness to be appointed as legal guardians. All in all I am satisfied that the Applicants are suitable adoptive parents.
16. Section 186 (8) of the [Children Act 2022](#) provides 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) a parent or guardian of the child, or any person who is liable by virtue of any order or agreement to contribute to the maintenance of the child.
 - (b)
 - c.”
17. The subject child is a niece of the Applicants. The Childs mother is deceased but the biological father has indicated his consent to the adoption. The father testified in court, he confirmed that the Applicants have been providing for the child since her mother died. The father further confirmed that his late wife did request the Applicants to care for her child. He told the court that he has now re-married and the child is not at ease with her new step-mother.
18. The father E L B O confirmed that the 1st Applicant is his cousin. He told the court that he wholeheartedly and unreservedly gives his consent to this adoption as he feels that the child will have a better life with the Applicants given that he is ailing and is not in position to meet all the needs of the child.
19. Annexed to the summons is a handwritten letter dated January 6, 2022 which the father wrote to the Adoption Agency seeking to have his child adopted by the Applicants (Exhibit 4). The Affidavit of consent dated February 2, 2022 duly sworn by the father (Exhibit 13(a)) is annexed to the summons.



In that affidavit the father confirms that he was extensively counselled by the Adoption Agency and that he has voluntarily signed the Certificate of Acknowledgment.

20. The father confirmed to the court that he understood that an adoption order once made is irreversible. I am satisfied that the consent of the biological father has been freely given.

21. Section 186 (8) of the [Children Act 2022](#) provides for consents 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)

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

22. The Subject child also testified in court. She was old enough to speak for herself. The child confirmed that her mother had passed away in the year 2014. She further confirmed that she knew the Applicants as her Uncle and Aunt. The child stated that she understood adoption to mean that she will become the child of the applicants. She gave her consent to the adoption.

23. The child has also written a consent letter dated April 7, 2022. I find that the consent of the child has been obtained as required by the Act.

24. Section 8(1) of the [Children Act 2022](#) provides as follows:-

“8(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.” (own emphasis)

25. This is a Kinship adoption. The same is recognized and provided for in Section 193 of the [Children Act 2022](#). The child is being adopted by persons who are well known to her. She will remain within the same family unit and will have regular contact with her blood relatives.

26. The Applicants have adequate accommodation for the child as they have a home in the USA as well as in Nyamira County. I have considered the reports prepared by the Adoption Agency, the Guardian Ad Litem, as well as the Director Childrens Services. All three reports were positive and all recommend the adopting.

27. Finally I am satisfied that this adoption does serve the best interest of the subject child. Accordingly, I do allow the summons dated April 7, 2022 and make the following orders:-

1. The Applicants K M M and M N S are authorized to adopt the child known as F N.

2. Upon adoption the child will be known as F N M.

3. The Registrar-General is directed to make the relevant entry in the Adopted Childrens Register

4. J S O and J K K are appointed as the legal guardians for the child.

Dated in **Nairobi** this 20th day of **January, 2023**.

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MAUREEN A. ODERO

JUDGE

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