



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re LR, MK, BOC & SMCO (Adoptees) (Adoption Cause  
E002 of 2021) [2023] KEHC 379 (KLR) (20 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 379 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
ADOPTION CAUSE E002 OF 2021  
DK KEMEL, J  
JANUARY 20, 2023**

**RULING**

1. The applicants' notice of motion for adoption dated June 29, 2021 and subsequently amended on September 15, 2021 seeks to adopt;
  - a. LR.
  - b. MK.
  - c. BOC.
  - d. SMCO.
2. The application is based on the grounds on the face of the motion and the affidavit of SOO who deponed inter alia; that he was in a relationship with one DOA who passed on in the year 2017 leaving behind one daughter MK whom he found her with; that he subsequently sired with the said DOA one daughter named LR wherein he left both girls under the care of his mother in-law ZB before solemnizing his marriage to RCO in the year 2020; that in the year 2014, BOC an abandoned child was left outside his mother in law's house where she applied to be a foster parent and that he together with his wife were given the child as foster parents on record and later given guardianship by the Eldoret Children's court; that he therefore seeks for the adoption of the said children for purposes of bonding and travelling with them to the United States of America.
3. The matter was heard viva voce. PW-1 Hesborn Aduma Lukose stated that he knows all the four minors as he used to live with their grandmother for over 25 years working for her. He also knows the claimants. The 1<sup>st</sup> claimant, is a husband to the 2<sup>nd</sup> claimant and who is the biological daughter of ZC who passed on in August, 2021 leaving behind the four children. From his interactions with the claimants, he knew that the children will be in safe hands since the claimants have been coming home once a year for over twenty years.
4. PW-2, RDO stated that she is married with three children. She stated that her last born child Shantel was born out of an incestuous affair and according to her community's customs (Bunyore), she is not



supposed to even see the child. She stated that she had given out the child for adoption by the claimants in good faith and voluntarily.

5. PW-3, FAO stated that she is the biological mother of PW-2. She confirmed the birth of the last child out of an incestuous affair. She stated that after the child's birth, she arranged for its adoption by the claimants. She has known the claimants for over a year as well as the 2<sup>nd</sup> claimant's mother whom she says used to assist children in the area. That she had arranged for the adoption of the child rather than be killed to satisfy cultural rituals which could lead to the child's death. She is optimistic that the claimants will take good care of the child.
6. PW-4, Benjamin Obare, the children's officer Lugari and Matete sub counties. He stated that he had prepared a social inquiry report dated 14/2/2022 and filed in court on which he produced in evidence. According to him, two of the children M and B had been under the foster care of the claimants earlier. He stated that the claimants later sought for adoption of the other two children. He stated that he conducted a social enquiry and did due diligence and prepared his report filed on 14/7/2022 which is to the effect that the applicants are residents of U.S.A. He confirmed that he has no objection to the application by the applicants to adopt the said children as they are suitable and capable of taking care of them.
7. PW-5, P N M, PW-1's wife stated that she knew both the Guardian Ad litem (Husband) and the children as well as the applicants. That she together with PW-1 have been taking care of the children.
8. PW-6 RMC, stated that she resides in the USA with her husband. That her late mum had been helping in taking care of the children before she passed on. She wishes the children to join to them so she can take good care of them.
9. PW-7, SOO stated that he is the biological father of one LR. He also has one biological child with PW-6 and now wishes to adopt the children together with two other children born by the 2<sup>nd</sup> applicant though he did not sire them himself.
10. The applicants later filed their written submissions which are now on record. In their submissions, the applicants rely on the provisions of article 53(2) of the Constitution. In vouching for their fitness to adopt the children, the applicants state that they have followed the due process and are fit to take the children to the USA.

#### **Analysis and determination.**

11. These proceedings relate to the adoption of the four subjects; SMCO born on 14/8/2021 to PW-1 out of an incestuous relationship and the community cultural practices could not allow the child to be brought up by the mother. The minor was adopted by one ZB (now deceased), the 2<sup>nd</sup> applicant's mother. LR is the daughter of DAO (deceased) and PW-6. Mary is a step daughter to the said PW-6. BO was found dumped outside the gate of ZB. She took the baby in and is now school going.
12. About the adopting parents, evidence showed that they are both Kenyan residents living and working in the United States of America and their home is in Mwamba, Kenya as reported by the children's officer in his report filed in court where he recommended adoption by the applicants. The report is favourable to the application for adoption.
13. When matters of adoption arise, the court is to be guided by the provisions of article 53(2) of the Constitution which provides thus;

A child's best interests are of paramount importance in every matter concerning the child.



14. The article mandates the courts to always strive to uphold the best interest of the child in such circumstances. Given the history of how the minors got to be under the care of one ZB (now deceased), the court is satisfied that a cordial relationship already exists between the adoptees and the applicant which will continue to thrive. The children will continue with their education and medication will be catered for as undertaken by the applicants in their testimony before this court.
15. Taking all the circumstances into perspective, I am satisfied that the applicants are fit to adopt the children and an order is hereby issued allowing the adoption of; LR, MK, BOC and SMCO by the applicants. The Director of Children Services is hereby directed to enter the names of the adoptees in the adoption register and to issue them with birth certificates.

Orders accordingly.

**DATED AND DELIVERED AT BUNGOMA THIS 20<sup>TH</sup> DAY OF JANUARY, 2023**

**D.KEMEI**

**JUDGE**

In the presence of :

Nanzuahi for Applicants

