



**In re RMK (Minor) (Adoption Cause E190 of 2022)  
[2023] KEHC 2609 (KLR) (Family) (24 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 2609 (KLR)

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

**ADOPTION CAUSE E190 OF 2022**

**PM NYAUNDI, J**

**MARCH 24, 2023**

**IN THE MATTER OF**

**JNM ..... APPLICANT**

**JUDGMENT**

1. This is a Kinship adoption as the applicant is the paternal aunt to the RMK, the subject minor whom she seeks to adopt vide the originating summons dated 27<sup>th</sup> Day of September 2022. She is therefore a relative within the extended family of the child.
2. The applicant is married to TMM under Customary law. The husband of the applicant gave his consent vide letter of consent dated September 10, 2022. They have 2 children born in in 2009 and 2019 respectively. The older daughter has given her written consent to this Adoption.
3. The applicant is motivated to adopt the child as his mother is dead and the father being a truck driver is absent from home for long periods. The father and paternal grandmother have given their written consents to the Adoption.
4. The minor subject of this application has a younger sister ASN who the Applicant has adopted vide Adoption Cause No. E072 of 2020 in which Adoption order issued on May 6, 2022.
5. The Applicant testified that she lived with the child from September 2019 when his mother died until June 2022 when she moved to Pennsylvania in the USA. She continues to provide financial support for his needs.
6. The Guardian Ad Litem, Leah Wanjiru Mwaniki, testified in Court. She visited the minor who is staying with the sister of the applicant. She observed that the Child is well taken care of. She interviewed the applicant both virtually while she was in the US and in person when the Applicant was in Kenya. She prepared and filed in court her report dated March 14, 2023. She recommends the adoption, especially because the Applicant has adopted the sister to the minor.



7. Mr. Muteru Nyamu, managing trustee and senior social worker at Change Trust confirmed that they undertook an assessment of the applicant in 2019. The report is dated November 1, 2019. The Change Trust declared the minor to be free for Adoption vide certificate Serial number 00482. The report observed that, the Applicant is organised, hardworking, focussed and forthright with information. It also documented that the applicant is supported by her friends and family. The committee therefore recommended her for the Adoption.
8. Damaris Kobonah an Officer from the Department of Children Services informed that she interviewed the Applicant and made a home visit at Syokimau. Vide report dated March 9, 2023 she found that the Applicant is fit for adoption.
9. The Proposed Legal Guardian, Jane Mungai, confirmed that she is a sister to the Applicant and Aunt to the minor. She works as a Secretary and is willing to be the Legal Guardian of the Child. She understands that this means that she will take up parental responsibility for the minor if for any reason the applicant is unable to fulfil her obligation. She supports the adoption.
10. The minor confirmed that he is supportive of the adoption. He currently is staying with his father at Kenol. He knows both the Applicant and the proposed Legal Guardian. They are both his paternal Aunts. He is excited by the adoption. He gave his consent to the adoption vide his letter dated April 11, 2022.
11. This is a kinship adoption under section 193 of the *Children Act*, 2022 and Annex C at Page 153 of the guidelines for Alternative family care of Children in Kenya, 2014 which defines Kinship adoption as adoption of a child by a person who is a relative of the child.
12. After carefully assessing the records herein, I am satisfied that the applicants have fulfilled all the legal requirements relating to the Child's adoption. Section 186 of the *Children Act*, 2022 provides;
  1. The court may make an adoption order on application by—
    - a. a sole applicant; or
    - b. two spouses jointly.
  2. The Court shall not make an adoption order in any case unless—
    - a. the applicant has attained the age of twenty-five years, but is not above the age of sixty-five years; and
    - b. the applicant, or both of the applicants in a joint application, is more than twenty-one years older than the child.
  3. The restrictions in subsection (2) shall not apply in any case where a sole applicant or one of the joint applicants is the mother, father or relative of the child.
13. The Applicant is aged 41 years. In accordance with section 186(3) she is the paternal Aunt of the minor. The minor was present in court and consented to the Adoption. The paternal Aunt of the minor was in court and has consented to the adoption.
14. Article 53 of *the Constitution* of Kenya, 2010 provides the overarching principles which must apply whenever any decision concerning a child is to be considered. It states:
 

"A Child's Best interests are of paramount importance in every matter concerning the child"
15. This principle is restated in Under section 8 of the *Children Act*, 2022 which provides



- 8 Best interests of the child.
- (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. the best interests of the child shall include, but shall not be limited to the considerations set out in the First Schedule.
16. Section 194 (1) (c) of the Act also requires that if the adoption order is made the order will be in the best interests of the child, having regard to the wishes of the child, depending on the child’s age and understanding, and to the ability of the applicant to maintain and educate the child;
17. In view of the foregoing the court is of the considered view that it is in the child’s best interest to be adopted by the Applicants. Accordingly, I allow the prayers sought in the originating summons dated September 27, 2022 and order as follows:
- i. The applicant JNM is allowed to adopt RMK (the minor) who shall continue to be known as RMK
  - ii. The Child is declared a Kenyan Citizen by Birth
  - iii. JWM is hereby appointed as legal guardian of the Child, RMK, in case of death or incapacitation of the Applicant.
  - iv. The Registrar be and is hereby directed to enter this adoption into the Register of Adopted Children.
  - v. The Guardian Ad Litem is hereby discharged.

**SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 24<sup>TH</sup> DAY OF March, 2023.**

**P M NYAUNDI**

**JUDGE**

**In the Presence of;**

**Ms Kimenyi Advocate for the Applicant**

**Karani Court Assistant**

