



**In re HMO (Child) (Adoption Cause E044 of 2022)
[2023] KEHC 17383 (KLR) (28 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 17383 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
ADOPTION CAUSE E044 OF 2022**

**MA ODERO, J
APRIL 28, 2023**

IN THE MATTER OF

MO APPLICANT

JUDGMENT

1. Before this court is the originating summons dated March 25, 2022 by which the Applicant MO seeks the following orders:-

- “ 1. Spent
- 2. Spent
- 3. Spent
- 4. That the Applicant herein be and is hereby authorized to adopt the child known as HMO.
- 5. That the court be pleased to appoint BKA as the legal Guardian of HMO upon granting of the adoption order.
- 6. That the Registrar General be and is hereby ordered to make the appropriate entries in the Adopted children’s register in respect of HMO.
- 7. That HMO be considered a Kenyan Citizen.
- 8. That costs of this application be in the cause.

2. The application was supported by the statement of even date sworn by the Applicant. The matter was canvassed by way of Vive Voce evidence on the virtual platform.



3. The Applicant is a single woman who has never been married. She has no biological child of her own. The Applicant wishes to adopt the subject child who is her niece being the daughter of the Applicant's elder brother.
4. The Applicant confirms that she understands the legal implications of an adoption order. She undertakes to accord to the child all rights due to a biological child including the right to inherit.

Analysis and Determination

5. I have considered the application for adoption, the evidence adduced in support thereof as well as the various reports filed in court.
6. The prerequisites for before an adoption order can be made are set out in section 184 (1) (a) and (b) of the *Children's Act 2022*: -
 - “(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.”
7. The subject child is a girl child who was born at Pumwani Maternity Hospital in Nairobi County on January 24, 2020. A copy of the child's Birth Certificate Serial Number XXXX is annexed to the summons (Exhibit-15). The child is therefore now aged three and a half (3 ½) years old and is above the Six (6) week age limit provided for in Law.
8. Change Trust Adoption Society which is a registered Adoption Agency has annexed to their report a copy of their certificate Serial Number XXXX dated March 18, 2022 declaring the child Free for Adoption (Exhibit-18). I find that the legal prerequisites for an adoption order have been met.
9. The duty of this court is to analyze the evidence on record to determine whether the Applicant is a suitable adoptive parent. The Applicant is a Kenyan citizen as proved by the annexed copy of her National Identity Card (Exhibit-2).
10. The Applicant is a registered nurse by profession who resides and works for gain in Germany. She has annexed translated copies of her German Residency Permit (Exhibit-7) as well as her Residency Registration confirmation from the Municipal Council of Neckarwestheim, where she resides (Exhibit-8).
11. The Applicant is a single woman who has never been married and has no child of her own. She seeks to adopt her brother's child. The Applicant explained that the biological mother of the child passed away three (3) days after delivering the child due to complications arising from delivery.
12. The child biological father is unemployed and has two (2) other children to care for including a child with special needs. The Applicant stated that she has all along been providing for all the needs of the subject child. She now wishes to adopt the child in order to provide her with a secure home and a mother figure in her life.
13. The Applicant is engaged in gainful employment, working as a Nurse with an organization known as [particulars withheld] in Stuttgart, Germany. She has annexed translated copies of her employment letter (Exhibit-9). She has also annexed copies of her bank statements [Exhibit-10 (a) and 10(b)]. The



- Applicant earns a monthly salary of approximately Kshs.250,000 which is sufficient to enable her provide for the needs of the child.
14. The Applicant is a Christian and intends to raise the child in the Christian faith. She was examined by a Doctor and was found to be in sound mental and physical health. The Applicant has annexed a translated copy of her certificate of Good Conduct issued to her by the German Police as well as a Clearance Certificate issued to her by the Directorate of Criminal Investigations [Exhibit 6(a) and 6(b)].
 15. The Applicant told the court that her entire Family are aware of and support her intention to adopt the subject child. She has appointed her sister and brother-in-law as the legal Guardians for the child. The proposed legal Guardians MKB and HCA have both signed an Affidavit of consent dated March 25, 2022 indicating their willingness to act as legal Guardians for the child.
 16. Section 186(8) (a) 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) on the application of one of the spouses, the consent of the other spouse; and
 - (c) in the case of a child who has attained the age of ten years, the child himself or herself.” [own emphasis]
 17. The biological father of the child AOA has written and signed a letter of consent dated January 13, 2022 confirming that he has given his consent to the adoption (Exhibit-11)
 18. The child’s father did testify in court. He confirmed that the child’s mother NMM sadly passed away a few days after delivery of the child. A copy of the Death Certificate Serial Number XXXX is annexed to the summons (Exhibit-12).
 19. The child’s father explained that he is unemployed and now has to single handedly provide for all his three (3) children. That he had to relocate to the rural home in order to take care of his ten(10) year son who has special needs.
 20. The father told the court that he is overwhelmed and is unable to provide for the upkeep and emotional support for his little girl. He therefore welcomes the offer by his younger sister (the Applicant) to adopt the child. The Father confirms that the Applicant has stepped in after the death of the child’s mother and has been providing for all the needs of the child.
 21. The Father confirms that he fully understands the legal consequences of an adoption order and understands that an adoption order once made cannot be reversed. I am satisfied that the child’s biological Father has voluntarily given his informed consent to this adoption.
 22. Based on the evidence presented to this court I am satisfied that the Applicant is a suitable adoptive parent.



23. 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;

24. As stated earlier the subject child is a three (3) year old girl child who unfortunately lost her mother shortly after her birth. The child’s father is not able to provide for the material and psychological needs of the child.

25. This is a kinship Adoption which is provided for by Section 193 of the *Children Act 2022*. The child will remain within the same family unit and will retain communication with her blood relatives.

26. The Applicant is a person who is well known to the child. I was able to see the child online. She was a healthy calm toddler who readily answered all the questions put to her by the court. The child was obviously very comfortable sitting on the lap of the Applicant. The adoption provides the subject child with the opportunity to be raised in a loving and stable home environment and to have in her life the mother-figure which she currently lacks.

27. I have carefully considered the reports filed by the Adoption Society, the Guardian Ad Litem and the Director Children’s Services. All the three (3) reports were positive and all recommend the adoption.

28. Finally I am satisfied that this adoption does serve the interest of the subject child. Accordingly I allow the application and make the following orders:-

(1) The Applicant MO is authorized to adopt the child known as HMO.

(2) Upon adoption the child will be known as HMO.

(3) The Registrar-General is directed to make the relevant entry in the Adopted children’s Register.

(4) MKB and HCA are appointed as the legal Guardians for the child.

DATED IN NAIROBI THIS 28TH DAY OF APRIL 2023.

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MAUREEN A. ODERO

JUDGE

