



**In re WO (Child) (Adoption Cause E165 of 2022)
[2023] KEHC 3897 (KLR) (Family) (24 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 3897 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E165 OF 2022
MA ODERO, J
APRIL 24, 2023
IN THE MATTER OF CHILDREN’S ACT NO 8 OF 2001
AND
IN THE MATTER OF ADOPTION OF W O (THE CHILD)
BY**

IN THE MATTER OF

**SAH 1ST APPLICANT
JH 2ND APPLICANT**

JUDGMENT

1. Before this court is the originating summons dated September 14, 2022 by which the Applicants SAH and JH seek the following orders:-
 - “ 1. THAT the Applicants be authorized to adopt WO a minor who is to be known as WH and the Registrar General be directed to enter this adoption into the Register of Adoptions.
 2. THAT LAM be appointed as the Legal Guardian of the minor.
 3. THAT the child be presumed to have been born in Kenya.
2. The Application was supported by the statement of even date sworn by the Applicants. The matter was canvassed by way of *vive voce* evidence on the virtual platform.



3. The Applicants are a married couple who currently reside in USA. The 2nd Applicant who is a Kenyan citizen also has a home in Kenya. The couple wish to adopt the Fourteen (14) year old brother of the 2nd Applicant.
4. The Applicants both confirm that they understand the legal implications of an adoption order. They undertake to accord to the subject child all rights due to the 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 was born on July 18, 2008. A copy of his Birth Certificate Serial No 69XXX7 is annexed at Page 56 of the summons. The child is now aged Fourteen and a half (14 ½) years old and is well above the six (6) week age limit provided for in law.
8. Buckner Kenya Adoption Services which is a registered adoption agency have annexed to their report the original copy of their certificate serial No 0590 declaring the child Free For Adoption. I am satisfied 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 Applicants are suitable adoptive parents. The 1st Applicant is an American citizen who is married to a Kenyan citizen. Annexed to the summons at Page 1 is a copy of the 1st Applicants passport No 512XXXX78 as well as a copy of the 2nd Applicants National Identity Card No 330XXX46 (Exhibit 2)
10. The Applicants are a couple who solemnized their union on August 17, 2019 in the state of IDAHO in the USA. A copy of their Marriage License Serial No 67XX2 is annexed at page 4 of the summons.
11. The Applicants each came into the marriage with a child from previous unions. The 1st Applicant who is divorcee has a Thirty-one (31) year old son from his previous marriage whilst the 2nd Applicant has a five (5) year old son from a previous relationship.
12. The Applicants state that the subject child is the younger brother of the 2nd Applicant. That following the demise of both parents the child was left as an orphan. The Applicants state that they have been providing for the child's educational needs as well as his upkeep. The child currently lives with a relative in the house of the 2nd Applicant in Njiru-Chokaa in Nairobi County.



13. The Applicants wish to adopt the child in order to give him a stable home. They want him to be a full member of their family and wish to take up full responsibility for the child.
14. The 1st Applicant's adult son DAH has written a letter consenting to the adoption of the 2nd Applicants brother (Page 30 of the summons)
15. The Applicants are both in gainful employment. The 1st Applicant who is an Engineer by profession works for a construction company in the USA. The 2nd Applicant is currently a student at [Particulars Withheld] College pursuing a course in Civil Engineering.
16. The 1st Applicant earns a salary of USD 195,000 per annum which is sufficient to enable him provide for the needs of the child. The Applicants have annexed a copy of bank statements from Wells Fargo Bank (Page 37 to 42 as well as a copy of the 1st Applicants pay slip (Page 44) as proof of their earnings. I am satisfied that the Applicants are financially stable.
17. The Applicants are both Christians and intend to raise the child in the Christian Faith. They have annexed a copy of a letter of recommendation from Harvest Life Church where they both worship (Page 34)
18. The Applicants were both examined by a Doctor and were found to be physically and mentally fit. The 1st Applicant has annexed a report from the Washington State Patrol indicating that he has no criminal record (see Page 52 of the summons) whilst the 2nd Applicant has annexed a copy of the clearance certificate issued to her by the Directorate of Criminal Investigations (Exhibit 1)
19. The Applicants confirms that their extended family are aware of and support their intention to adopt the child. The Applicants have appointed a relative as the legal Guardian for the child. The proposed legal Guardian LAM has signed a letter of consent dated August 31, 2022 (Page 53) indicating her willingness to act as the legal Guardian for the child.
20. All in all I am satisfied that the Applicants are suitable adoptive parents.
21. The subject child is Fourteen (14) year old orphan and is the younger brother of the 2nd Applicant. The child's Father MMO passed away on January 9, 2014. A copy of the Death Certificate Serial No 01XXX77 is annexed at Page 5 of the summons.
22. The child's mother AAO passed away on July 29, 2016. A copy of the Death Certificate Serial Number 044XXX4 is annexed at page 6 of the summons.
23. Following the death of the child's parents within a space of two (2) years, he was left with nobody to care for him. The child's other sister is also a student in Form Four. The sister SS has written a letter dated June 30, 2022 (Page 35) consenting to the adoption of the child by their eldest sister.

24 "Section 186(8) (c) 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

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- (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]
25. The subject child has written a letter dated June 30, 2022 consenting to his adoption by the Applicants. The child testified before court. He told the court that the Applicants were well known to him and confirmed that the 2nd Applicant is his elder sister.
26. The child told the court that the Applicants have been paying his school fees and supporting him. That he currently lives with a relative in the house of the 2nd Applicant in Nairobi. The child confirmed that he was aware of the Applicants intention to adopt him. He stated that he was willing and eager to be adopted by the Applicants and to become a full member of their family.
27. In deciding upon any matter involving a child, courts are obliged to give priority to the best interests of the said child. Section 8 (1) of the *Children Act 2022* provides:-
- “(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;” (own emphasis)
28. This is a child who was orphaned at an early formative age. He has been left adrift with nobody to give him parental care and guidance. This adoption allows the child the opportunity to be raised in a stable loving environment with parents and siblings who love him. This is a kinship adoption which is recognized by Section 193 of the *Children Act 2022*. The child will remain within the same family unit and will have regular contact with his blood relatives.
29. I have carefully perused the reports prepared by the Adoption Agency, the Guardian Ad Litem and the Director Children’s Services. All three reports were positive and all recommend the adoption.
30. In conclusion I am satisfied that this adoption serves the best interests of the subject child. Accordingly I allow this Application and make the following orders:-
- (1) The Applicants SAH and JH are authorized to adopt the child known as MINOR WO.
 - (2) Upon adoption the child will be known as WH.
 - (3) The Registrar-General is directed to make the relevant entry in the Adopted children’s Register.
 - (4) LAM is appointed as the legal Guardian for the child.

DATED IN NAIROBI THIS 24TH DAY OF APRIL 2023.

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MAUREEN A ODERO



JUDGE

