



**In re JN alias JNN (Adoption Cause E151 of 2022)
[2023] KEHC 21758 (KLR) (Family) (31 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 21758 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E151 OF 2022
PM NYAUNDI, J
JULY 31, 2023**

IN THE MATTER OF

**JKK 1ST APPLICANT
CNK 2ND APPLICANT**

JUDGMENT

1. This is a kinship adoption as the applicants are the paternal uncle and aunt to JN the minor, whom they seek to adopt vide Originating Summons dated August 24, 2022. They are therefore extended relatives family of the child. The applicants have been married since 1991. They wish to adopt the baby with the intention to provide a home to a child who would not have the opportunity and transform the child's life. The applicants have their biological children, three sons, KK (July 1, 1993), SN (August 31, 1995) SC (July 31, 2002) who are adults.
2. The matter proceeded for hearing via viva voce evidence on the Teams virtual platform on the July 19, 2023.
3. The Applicants are Kenyan Citizen residing in The United States of America. They aver that they have the financial means and capability to take care of the Child. The 1st applicant as Restaurateur and The second applicant works as nursing assistant. They fully understand the consequences of an adoption order.
4. The minor was born on June 30, 2006 as per the birth certificate annexed serial number xxxx by AN and MM Njoroge. The two separated at 2014 when the child was only two years old owing to the child's father hopeless alcoholism. Soon after separation the father placed the child in the care of the 2nd applicant and her mother, the child's grandmother JNN.



5. The child's grandmother unfortunately died on August 28, 2021 as per death certificate annexed serial number xxxx leaving the minor and her sister, GMN under the care of their brother BRN, a young adult and college student.
6. Both biological parents were present in court and stated that they understood the adoption, they consented to the adoption. They have both signed affidavits dated August 18, 2022. The older brother to the minor has also consented to adoption via letter dated March 18, 2022. The area assistant chief of Mang'u sub location the residential area of the minor's father has also signed a letter dated June 12, 2022 also recommended adoption for the minor.
7. Prior to the hearing of the adoption application, CHANGE TRUST issued a certificate serial No xxxx declaring the child free for adoption. The Court appointed a Guardian Ad litem TWK.
8. The Guardian Ad Litem, TWK was present in Court. She confirmed that she assessed the Applicants virtually as they are based in the United State of America and met them physically on August 2022 when they were in the country. She recommends that the Applicants be allowed to adopt the minor.
9. An officer of the Department of Children Services, Nyaranga Odundo prepared a report dated February 16, 2023. Which was counter signed by Nancy Waswa. The report established that the child was born on June 30, 2006. She is the niece to the applicants since her father AN and CNK, the second applicant, are siblings. After the separation of her parents, the child lived with her grandmother until the time of her death on August 25, 2021. Upon her grandmother's passing, the child continued to reside in Nakuru with her older brother and father while her younger sister moved to Loititok to live with their biological mother. She continues to live with her father and brother to date but attends a boarding school in Embu for her education.
10. The proposed Legal Guardians SK AND KK attended court and confirmed they are willing to take up the role of legal guardian. They are the sons of the applicants.
11. This is a kinship adoption under Section 193 of the *Children Act*, 2022 and Annex Cat 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 applicant has fulfilled all the legal requirements relating to the Child's adoption. Section 186 of the *Children Act*, 2022 provides.
The Court may make an adoption order on application (1) 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 Applicants are aged 59 years and 56 years respectively.



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 Under Section 8 of the Children Act, 2022 which provides

Best interests of the child.

In all actions concerning children, whether undertaken (1) 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.

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;

16. 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 August 24, 2022 and order as follows:

I. The Applicants JKK and CNK be allowed to adopt **JN ALIAS JNN.

II. The Child is to be known as JNK

III. The Child be presumed to be a Kenyan citizen by birth.

IV. SNK AND KKK ARE hereby appointed as legal guardians of Child

V. The Registrar be and is hereby directed to enter this adoption into the Register of Adopted Children.

VI. The Director of Immigration is authorized to issue the child with a Kenyan passport.

VII. The child's date of birth is June 30, 2006 and place of birth be PGH Nakuru.

VIII. The Guardian Ad litem is discharged.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 31ST DAY OF JULY, 2023.

P. NYAUNDI

HIGH COURT JUDGE

In the presence of:

Onsongo h/b for Ms. Kiguatha for the Applicants

Sylvia Court Assistant

