



**In re EMO (Child) (Adoption Cause E068 of 2023)  
[2023] KEHC 21764 (KLR) (Family) (28 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 21764 (KLR)

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

**FAMILY**

**ADOPTION CAUSE E068 OF 2023**

**PM NYAUNDI, J**

**JULY 28, 2023**

**IN THE MATTER OF THE CHILDREN ACT, 2022**

**AND**

**IN THE MATTER OF AN APPLICATION FOR THE ADOPTION OF BMO ( THE CHILD)**

**IN THE MATTER OF**

**FSOG ..... 1<sup>ST</sup> APPLICANT**

**MOA ..... 2<sup>ND</sup> APPLICANT**

**JUDGMENT**

1. Before this Court is the Amended Originating Summons dated October April 17, 2023 ,and a statement dated April 17, 2023 by which the Applicants seeks the following orders:-
  - a. That A A M be appointed *guardian ad litem*.
  - b. That the Director of Children Services be ordered to investigate the fitness of the Applicants to adopt and file the requisite Report.
  - c. That to adopt E M O (hereinafter referred to as ‘minor’),
  - d. That the Child be presumed a Kenyan Citizen by birth.
  - e. That HIO be appointed as Legal Guardian
  - f. That the Registrar General be directed to enter the adoption in the Adopted Children Register.
  - g. That the Director of Immigration be authorized to issue the child with a passport.
2. The Application was canvassed by way of vive voce evidence on the virtual platform She is a business woman Property Management.



3. The 1<sup>st</sup> Applicant is a Kenyan Citizen while his husband herein the 2<sup>nd</sup> Applicant herein (M O A) is a Somali Citizen. The Applicants resides in Kilimani Nairobi within the Republic of Kenya. She has lived with the subject 9 years. The subject is 2 years and months. She states that she has a good support system from her husband, her sister and brother since they stay nearby as well as house help
4. The 1<sup>st</sup> Applicant further stated that the child goes to [particulars withheld] School where he has completed grade 6 and will be joining grade 7 in a new school in Langata.
5. She further asserted that she has no biological children of her own hence her desire to adopt but her husband herein 2<sup>nd</sup> Applicant has 7 children from his previous marriage.
6. Accordingly, the 1<sup>st</sup> Applicant would like to adopt the subject so that the child can have identity that will enable the child to access many services. She further asserted that she is in a position to care for the child both financially and emotionally. She has no biological children of her own hence her desire to adopt.
7. The 1<sup>st</sup> Applicant stated that she was living in Eastleigh where in January, 2013 a lady carrying an infant baby walked into her house and she welcomed her. Consequently, in July, 2013 the said lady disappeared leaving the minor with the 1<sup>st</sup> Applicant.
8. The 1<sup>st</sup> Applicant efforts to trace the lady for close to two (2) years bore no fruits prompting her to report the matter in October to the Kamukunji Police Station.
9. It's the 2<sup>nd</sup> Applicant's case that he is a former Diplomat and Politician where he states that he has lived with the child since 2013-2014 and he has been providing for the child as his own child and it is important for the minor to have an identity and as parents they desire the child to be recognised as their child.
10. He also averred that he has 7 other children who are adult and consented to the adoption of the child herein.
11. He further averred that he understands the implication of the adoption order. The 2<sup>nd</sup> Applicant also stated that under Sharia Law he understands that the child is entitled to be an heir to his estate.
12. Therefore, they have explained to the child the adoption process and she is happy, he has been helping the child with quran study and also spending time with her as well as taking her out and mentoring the child.
13. The Child EMO, the Child herein is a female Child and is 11 years old. She was abandoned at Fatuma's house in July, 2013 where the mother did not shown up to date.
14. The 1<sup>st</sup> Applicant (F) reported the matter to (particulars withheld) Police Station vide OB Number 30/14/2013, Assistant Chief as well as to the Directorate of Children Services at (particulars withheld), Nairobi where she was requested to continue taking care of the child.
15. The 1<sup>st</sup> Applicant took the child to the Hospital for medical attention and all other necessary immunizations.
16. It is evidence that nobody went to claim the Child and that attempts to trace the biological mother of the Child and Government Agencies were fruitless.
17. The Child was declared free for adoption by Change Trust on 23<sup>rd</sup> March, 2023 and a certificate confirming she is free for Adoption serial no. 00562 was issued pursuant to Section 65 of the [\*Children Act, 2022\*](#).



18. Further, a report by Ephraim Muteru Njama Managing Trustee at Change Trustee Adoption prepared a report dated March 23, 2023 in which he recommended the adoption of the child. The Report also confirmed that the Applicants are socially and financially capable of raising the Child. The Report further stated that the Applicants had fulfilled all the pre-requisites for a local adoption under Section 185 the *Children Act, 2022* and subsequent Children Regulations, 2005. They recommended the adoption without reservation as it will be in the best interests of the Child.
19. The Report from Assistant Director of Children Services prepared by Winfred Ikinya dated 10<sup>th</sup> July, 2023 recommended the Applicants to adopt the child.
20. Asha Kinsi Mohamed Farah the proposed guardian ad-litem filed his consent to act as guardian ad-litem of the Child on 17<sup>th</sup> April, 2023 and was so appointed by the Court 18<sup>th</sup> Ma, 2023. He filed his dated Report on 11<sup>th</sup> July, 2023. In his Report and viva voce evidence, that the child bonded well with the prospective parents, he also observed that the child is taken quite well to the news that the prospective parents and is eager to be formally recognized as their child. It's also his observation that the child is always clean, well fed and appropriately clothed as well as able to communicate well with the adoptive parents where they speak in Swahili, English and little Somali.
21. The *guardian ad litem* further stated that he is aware that the Applicants herein have visited their medical doctors who have cleared them to be in good health. Both Applicants are citizens of good standing and not involved in criminal activities as they have also confirmed that the Applicants have a clean bill of health and that they had no criminal record as evidenced by copies of their certificate of good conduct referenced as PCC-9QTWRRZ, E-Visa No. RMEV-PES9PVZA and medical records attached dated 22<sup>nd</sup> February, 2023. It's also his statement that the Applicants are capable of financially providing for the child since they general income from their respective business where they own various assets in Nairobi and Somalia thus it's his recommendation that, the Applicants be allowed to adopt the child herein EMO.
22. Consequently, HIO who is a sister to the 1<sup>st</sup> Applicant is a Kenyan Citizen born in Kakamega, Western Province. She has three (3) adult children. She consented to act as Legal Guardian of the child as per letter of consent dated 10<sup>th</sup> March, 2023. She stated that she understands that if anything happens to the parents, she will assume full parental responsibility further stated that she has financial ability to provide for the child.
23. Further, the child herein EMO in online Court stated that he is 10 years old. The Child stated that his mum is Fatuma and his dad is MOA. He also recognized his Aunt HIO. He also stated that he go to [particulars withheld] School and he is aware that his parents want to adopt him and that is why he is in Court.

### **Determination**

24. The Court has evaluated the facts of this local adoption from all the Reports filed. It is evident that the Applicants have fulfilled all the legal requirements of a local adoption as required under Section 184 of the *Children Act, 2022*. All the necessary Reports and consents required for this Adoption have been filed. The consents of the biological mother of the Child are hereby dispensed with as the same cannot be obtained as the Child is an abandoned Child.
25. This Court has satisfied itself that the Applicants are qualified and able to take care of the child. The home visits conducted by the *guardian ad litem* and the representative of the Department of the Children's Services established that the Applicants have the financial and emotional capability to



provide for the upkeep, care and education of the Child and that the Child has bonded well with the Applicants.

26. Article 14 (4) of the [Constitution of Kenya, 2010](#) provides that: -

“(4)A child found in Kenya who is, or appears to be less than eight years of age and whose nationality and parents are not known, is presumed to be a citizen by Birth.”

27. This court is therefore of the opinion that this Adoption would be in the best interest of the child and allows the Applicants’ application that;

- a. The Applicants, FSOG and MOA are hereby allowed to adopt Child EMO.
- b. Henceforth, the child shall be known as EMO.
- c. Her date of birth shall be 6<sup>th</sup> November, 2012.
- d. She is presumed to be a citizen of Kenya by birth.
- e. HIO (the Applicant’s sister) is hereby appointed as legal guardian of the child.
- f. The Registrar General to enter this order in the Adoption Children Register.
- g. The Director Immigration be authorised to issue the child with a Kenyan Passport.
- h. The *guardian ad litem* is hereby discharged.

It is so ordered.

**SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 28<sup>th</sup> DAY OF JULY, 2023.**

**P M NYAUNDI**

**HIGH COURT JUDGE**

