



REPUBLIC OF KENYA



**In re ZAMM & MKMM (Minors) (Adoption Cause E028 of 2022)  
[2023] KEHC 21756 (KLR) (Family) (28 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 21756 (KLR)

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

**FAMILY**

**ADOPTION CAUSE E028 OF 2022**

**PM NYAUNDI, J**

**JULY 28, 2023**

**IN THE MATTER OF AN ADOPTION ORDER**

**FOR**

**ZAMM AND MKMM (MINORS)**

**ZAMM AND MKMM (CHILDREN)**

**VRS**

**LMM.....APPLICANT**

**JUDGMENT**

1. The applicant herein (LMM) is a Kenyan citizen and live in Iowa, United State of America (USA). She has lived in the US since 2015. Her originating summons dated November 15, 2022, supported by her affidavit sworn on the same day and canvassed by viva voce evidence on the online platform incourt seeking the following orders;
  - a. That to adopt ZAMM and MKMM (hereinafter referred to as minors).
  - b. That upon adoption the children be allowed to keep their present names.
  - c. That RA be appointed legal guardian of both Children ZAMM and MKMM.
  - d. That the Registrar General be directed to enter the adoption in the Adopted Children Register.
2. This is a Kinship Adoption envisaged under section 193 of the *Children's Act* 2022, since the Applicant is the biological grandmother to the two children.
3. The applicant was born in Vihiga County on May 14, 1962. She got married to her late husband MMM in 1982 where they solemnized their union in 1987 under the Islamic Sharia Law and they were blessed with four (4) children, three surviving. Consequently, in 2018, the applicant remarried in the United



States of America to RMG who he has no objection to the adoption of the children. The applicant is a Certified Nurse in United States of America.

4. According to the applicant, she knows M and ZA. Z is his grandchild and M is his sister. The two children were left behind by their late mother FSM who died on July 1, 2022 as per attached death certificate. Their mother was the first born and only daughter to the applicant and was staying at NHC, Lang'ata. She was renting the house.
5. The children stay in [particulars withheld] Estate in Lang'ata with her youngest, son HMM. He takes care of them. They go to school at [particulars withheld] Primary School. It's the Applicant's contention that she has been supporting the children's mother as while in Kenya, she lived with the children in her home in Lang'ata together with their late mother and continued to support them until the demise of her daughter.
6. It's her further statement that the family had a discussion after the passing on of children's mother on how to accommodate them and agreed that the children would live under the care of their maternal uncle, HMM, in their Lang'ata family home.
7. The applicant contends that she has been catering for all the children's needs while under the care of their uncle including paying the school fees, food, clothing as well as medical expenses. She has been supporting the children so that she can be legally recognized as their parent. She further contends that she wants the children under her custody and relocate with them to the USA as well as their legal parent.
8. Accordingly, the applicant has filed a report from the Welfare Department in United States confirming that she is able to take care of the children. She has attached the consent of the children, she has also been interviewed by Child Welfare Society and the OCS. She further affirmed that she has made arrangements.
9. The children were freed for adoption by the Child Welfare Society of Kenya Adoption by their certificate dated May 29, 2023, their Serial Numbers 1xxxx5 and 1xxxx4 respectively. Section 65 of the [Children's Act, 2022](#).
10. The adoption process was also consented by HMM in online platform in Court where he stated that he lives in [particulars withheld], Lang'ata. He is a Software Engineer where is employed at [particulars withheld]. He stated that ZAMM is his nephew and the Applicant is his mother who currently resides in the United States.
11. He further stated that he stays with the children as their mother who is his sister passed away on July 1, 2022 and stated that they have been interviewed by the Director of Children Services, children welfare Society and OCS. The Applicant also stated that she has made arrangements for their education though she is yet to identify the school but will them admitted to a day care.
12. The application was further consented by Guardian Adlitem herein (RA.) She resides in Vihiga County. She is a retired citizen and work as a Caterer. According to her oral evidence in online platform in Court, she visited minors and interviewed them as well as the applicant and recommended that the Applicant has meet the legal requirements where she recommended her to adopt the minors herein.
13. According to Social Worker report dated May 29, 2023. She stated that the minors are still young and in need of parental guidance, the applicant has been supporting them. The children understand the adoption process and provided voluntary consents. This being kinship adoption, it will safeguard their interests in that it will allow the children to continue receiving love for their wholesome growth and will remain within their family and preserve their heritage. She recommended that the Applicant be allowed to adopt the two (2) children.



14. The letter from a Social Worker from Broad Lawns Medical Center dated August 25, 2022 recommended the Applicant's adoption since the applicant's house is spacious to accommodate the two children as well as located in a safe neighbourhood.
15. For this adoption to be facilitated, the applicant have been assessed by the Guardian Adlitem, Child Welfare Society of Kenya, Social Worker from Broad Lawns Medical Center. The four have compiled and filed their comprehensive reports in Court subsequently, all the reports resulted to be favourable and recommend the proposed adoption.
16. The Applicant has demonstrated that she has the financial and emotional capability and capacity to take care of the children. The children themselves appears to have bonded well with her and being a kinship adoption, the children will remain within their family and preserve their heritage.
17. In the opinion of this court it would be in the best interests of the children that they be adopted by the applicant. The applicant will be able to provide a home and a family for the children to grow up in and thereafter be a useful members of the family.
18. Consequently, the applicant shall assume all parental rights and duties of the biological parents in respect of the adopted children; they shall treat the adopted children as if they were born to her. The applicant has been made aware that once the adoption order is made it shall be final and binding during the lifetime of the children and that the children shall have the right to inherit her property.
19. The applicant cannot give up the children owing to any subsequent unforeseen behaviour or other changes in the children.
20. It is also confirmed that the applicant has a clean bill of health and that she has no criminal record as evidenced by a copy of her certificate of good conduct dated August 4, 2022 Referenced Number PCxxxxP6. The Applicant also stated that she is not suffering from any ailment that would hinder her from caring for the children.
21. The report further stated that the applicants have fulfilled all the pre-requisites for a kinship adoption under section 185 the *Children's Act*, 2022 and subsequent *Children Regulations*, 2005. They recommended the adoption without reservation as it will be in the best interests of the Children.

### **Determination**

22. The court is satisfied that all the legal requirements for a kinship adoption have been met, and therefore make the following orders: -
  - a. That the applicant, LMM is hereby allowed to adopt the children ZAMM and MKMMi.
  - b. That the children to keep their present names as ZAMM and MKMM.
  - c. That the said children are hereby declared to be Kenyan Citizen by birth and born on November 7, 2013 and August 21, 2009.
  - d. That RA is hereby appointed legal guardian of the children in the event something untoward happens to the applicant.
  - e. That the Registrar-General is hereby directed to enter this adoption order in the adoption register.
  - f. That the guardian ad litem is hereby discharged.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28<sup>TH</sup> DAY OF JULY, 2023.**



**P NYAUNDI**  
**JUDGE**

