



**In re DMO (Minor) (Adoption Cause E038 of 2023)  
[2023] KEHC 21850 (KLR) (Family) (11 August 2023) (Judgment)**

Neutral citation: [2023] KEHC 21850 (KLR)

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

**FAMILY**

**ADOPTION CAUSE E038 OF 2023**

**PM NYAUNDI, J**

**AUGUST 11, 2023**

**IN THE MATTER OF THE CHILDREN’S ACT NO. 8 OF  
2001 IN THE MATTER OF ADOPTION OF DMO (A MINOR)**

**AND IN THE MATTER OF AN APPLICATION FOR  
KINSHIP ADOPTION BY**

**IN THE MATTER OF**

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

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

**JUDGMENT**

1. This is a kinship adoption as the applicants are the paternal uncle and aunt to DMO the minor, whom they seek to adopt vide Originating Summons dated 21st March 2023. They are therefore extended relatives family of the child. The applicants have been married since 2006 and have annexed marriage certificate serial number xxxx. They wish to adopt the baby with the intention to provide a home to a child and transform the child’s life. The applicants have their biological children, LAB (16th December 2007),EOB (8th December 2010) GN (19<sup>th</sup> November 2015).
2. The matter proceeded for hearing via viva voce evidence on the Teams virtual platform on the 28th of July 2023.
3. The Applicants are Kenyan Citizen residing in Canada. They aver that they have the financial means and capability to take care of the Child. The 1st applicant as Direct Support Worker and The second applicant is a Nursing student. They fully understand the consequences of an adoption order.
4. The minor was born on 1<sup>st</sup> December 2005 as per the birth certificate annexed serial number xxxx by POO and RKO. They are financially unstable to provide to the minor.



5. The Applicants physically resided with the minor for 8 years and assumed parental responsibility over her providing her with among other emotional, mental and financial support up till the year 2022 when they relocated to Canada.
6. Both biological parents were present in court and stated that they understood the adoption, they consented to the adoption. They have both signed letter dated 6<sup>th</sup> February 2023. They have also signed consent form dated 6<sup>th</sup> March 2023. EKO an Aunt to the minor also consented to the adoption on the letter dated 3<sup>rd</sup> March 2023. The minor also consented via letter dated 6<sup>th</sup> February 2023.
7. Prior to the hearing of the adoption application, KKPI Adoption Society issued a certificate serial No. xxxx declaring the child free for adoption. The Court appointed a Guardian Ad litem MKK.
8. The Guardian Ad Litem, MKK was present in Court. She confirmed that she assessed the Applicants virtually as they are based in the Canada. She recommends that the Applicants be allowed to adopt the minor.
9. An officer of the Department of Children Services, Ezekiel Kimani prepared a report dated 14<sup>th</sup> MAY 2023. Which was counter signed by Mary Atati. The report established that the minor is 17 years old having been born on 1<sup>st</sup> December 2005. She was born to POO and RKO. Her mother is the sister to the female applicant and this is therefore kinship adoption. She lives with her parents in Ruai and has just finished her secondary school. She was interviewed and she confirmed giving consent freely and without being coerced by anyone. She is looking forward to be adopted by her aunt and uncle.
10. The proposed Legal Guardian EKO attended court and confirmed she is willing to take up the role of legal guardian. She is the sister the second applicant.
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 by-
  - (1)
    - 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 38 years and 37 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 24<sup>th</sup> August 2022 and order as follows:

- I. The Applicant CBO and EMO be allowed to adopt DMO.
- II. The Child is to be known as DMO
- III. The Child be presumed to be a Kenyan citizen by birth.
- IV. EKO is 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 Guardian Ad litem is discharged.

**SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 11<sup>TH</sup> DAY OF AUGUST, 2023.**

**P M NYAUNDI**

**JUDGE**

In the presence of:

Ms Ambaka, Advocate for the Applicants

