



**In re EMC alias AMM (Adoption Cause E235 of 2022)
[2023] KEHC 23267 (KLR) (Family) (29 September 2023) (Judgment)**

Neutral citation: [2023] KEHC 23267 (KLR)

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

FAMILY

ADOPTION CAUSE E235 OF 2022

PM NYAUNDI, J

SEPTEMBER 29, 2023

IN THE MATTER OF

CMR APPLICANT

JUDGMENT

1. This is a kinship adoption as the applicant is a sister to EMC the minor, whom she seeks to adopt vide Originating Summons dated December 15, 2022. The applicant has been married since 2020 to NR as per marriage license serial number XXXX. The husband is a foreigner and consents to this adoption. The Applicant wishes to adopt the baby with the intention to provide for him an opportunity at a better life. The applicant does not have biological children.
2. The matter proceeded for hearing via viva voce evidence on the Teams virtual platform on the July 27, 2023.
3. The Applicant is Kenyan Citizen residing in The United States of America. She avers that she has the financial means and capability to take care of the Child. The applicant is a Residential Program Manager at Laradon. She fully understands the consequences of an adoption order.
4. The minor is a brother to the Applicant. The mother, JWK attended Court and confirmed that she consents to the adoption. The Applicant has been providing financial support of the minor since 2012, while the sister LNK has been living with the Child.
5. Mr Muteru Njama representing Change Trust confirmed that Prior to the hearing of the adoption application, they undertook an assessment of the Applicant and by their report dated July 19, 2022, confirmed the child to be free for adoption and that the Applicant meets the legal requirements to be allowed to adopt the child. They recommend the adoption.
6. An officer of the Department of Children Services, stationed in Nakuru, Alice Wanyoni prepared a report dated May 3, 2023. The report recommends the Adoption.



7. The proposed Legal Guardian LN attended court and confirmed she is willing to take up the role of legal guardian. She is a sister to the Applicant.
8. EMC the minor attended court. He confirmed he knows the Applicant. He is differently abled. He is 10 years Old and happy to join the Applicant in the US.
9. NDR was present on the call. He is the spouse to the Applicant. He supports the Adoption
10. This is a kinship adoption under Section 193 of the *Children Act*, 2022 and Annex C at 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.
11. 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.
12. The Applicant is 28 years old.
 13. 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
 14. 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;

15. 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 Applicant. Accordingly, I allow the prayers sought in the Originating Summons dated December 15, 2022 and order as follows:

- I. The Applicant CMR be allowed to adopt EMC alias EM.
- II. The Child is to be known as EMR
- III. The Child be presumed to be a Kenyan citizen by birth.
- IV. The child's date of Birth is September 2, 2012 and place of birth is Nairobi County
- V. LNK is hereby appointed as legal guardian of the Child
- VI. The Registrar is hereby directed to enter this adoption into the Register of Adopted Children.
- VII. The Director of Immigration is authorized to issue the child with a Kenyan passport.
- VIII. The Guardian Ad litem is discharged.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 29TH DAY OF SEPTEMBER, 2023.

P M NYAUNDI

HIGH COURT JUDGE

In the presence of:

Onsongo, Advocate h/b for Ms Kiguatha for the Applicant

Sylvia Court Assistant

