



**In re FON (Adoption Cause E087 of 2023)
[2023] KEHC 24879 (KLR) (Family) (27 October 2023) (Judgment)**

Neutral citation: [2023] KEHC 24879 (KLR)

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

ADOPTION CAUSE E087 OF 2023

PM NYAUNDI, J

OCTOBER 27, 2023

IN THE MATTER OF

VMM 1ST APPLICANT

ENO 2ND APPLICANT

JUDGMENT

1. This is a kinship adoption as the applicants are paternal uncle and aunt FOY the minor, whom they seeks to adopt *vide* Originating Summons dated 18th May 2023. The applicants have been married since 2014. The applicants have two biological children BM and BM2. They desire to assume parental responsibility over the child following the demise of her father.
2. The matter proceeded for hearing via viva voce evidence on the Teams virtual platform on the 5th and 12th of October 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 is a businessman and 2nd applicant is a Nurse. They reside at Atlanta, Georgia. They fully understand the consequences of an adoption order.
4. The minor was born on 21st April 2006 as per the birth certificate annexed serial number 823XXX4 to the late RNM and RNN. The minor’s father died on 1st May 2020 as per death certificate serial number 114XXX7. Before his demise, he had separated from their mother had she had remarried somewhere along the Kenyan coast. The deceased had the custody of the children. The child and younger sibling were taken in by the applicant after the death of their father and has lived with them ever since.
5. The biological mother has signed an affidavit dated 14th February 2023. She has also submitted a consent dated 15th February 2023. She further affirmed that she is in agreement with the decision and willingly signed the certificate of acknowledgement and legal consent dated 15th February 2023. The minor was



present in court he stated that he understands he was in court for his adoption. He consented to the adoption and has also presented a consent dated 15th February 2023.

6. Prior to the hearing of the adoption application, Little Angels Adoption Society issued a certificate serial No. 00XXX0 dated 1st March 2023 declaring the child free for adoption. The Court appointed a Guardian *Ad litem* RY.
7. The Guardian *Ad Litem*, RY was present in Court. She confirmed that she assessed the Applicants. She presented her report dated 5th July 2023. She recommends that the Applicants be allowed to adopt the minor.
8. An officer of the Department of Children Services, Winfred Ikinya was present in court and recorded the adoption. Ezekiel Kimani prepared a report dated 30th June 2023. The report established that the child was born on 21st April 2006 as per the birth certificate annexed serial number 823XXX4 to the late RNM and RNN. The minor's father died on 1st May 2020 as per death certificate serial number 114XXX7. Before his demise, he had separated from their mother and she had remarried somewhere along the Kenyan coast. The deceased had the custody of the children. The child and younger sibling were taken over by the applicant after the death of their father and he has lived with them ever since. He attends school at [Particulars withheld] High School where he is in form 4 and he lives in the applicants' house in Kisii Township.
9. The proposed Legal Guardians JM and KO attended court and confirmed they are willing to take up the role of legal guardian. JM is the sister of the 1st applicant and KO is her husband.
10. 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.
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.
 - a. The Court may make an adoption order on application (1) by-
A sole applicant; or
Two spouses jointly.
 - (2) The Court shall not make an adoption order in any case unless—
The applicant has attained the age of twenty-five years, but is not above the age of sixty-five years: and
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 Applicants are aged 40 years.
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

b.

(1) By public or private social welfare institutions, courts of Law, administrative authorities, or legislative bodies—

c. The best interests of the child shall be the primary consideration;

d. 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 Applicants. Accordingly, I allow the prayers sought in the Originating Summons dated 18th May 2023 and order as follows:

i. The Applicants VMM and EMO be allowed to adopt FOY.

ii. The Child is to be known as FOY.

iii. The Child be presumed to be a Kenyan citizen by birth born on 21st April 2006 in Kisii Central District.

iv. JM and KO are hereby appointed as legal guardians of Child

v. The Registrar 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 27th DAY OF OCTOBER, 2023.

P. NYAUNDI

JUDGE

In the presence of:

Oronga Advocate for Applicants

