



**In re JN (Minor) (Adoption Cause E088 of 2023)
[2023] KEHC 24828 (KLR) (Family) (27 October 2023) (Judgment)**

Neutral citation: [2023] KEHC 24828 (KLR)

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

ADOPTION CAUSE E088 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 J N the minor, whom they seek to adopt vide Originating Summons dated 18th May 2023. The applicants have been married since 2014. The applicants have two biological children B M and B M. 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 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 7th June 2007 as per the birth certificate annexed serial number 82XXX25 to the late R N M and R N N. The minor's father died on 1st May 2020 as per death certificate serial number 11XXX07. Before his demise, he had separated from the mother of the minor who re-married somewhere along the Kenyan coast. The deceased had the custody of the children. The child and her elder sibling were taken in by the applicant after the death of their father and she has lived with them ever since.
5. The biological mother has signed an affidavit dated 14th February 2023. She has written 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 she stated that she understands she was in court for her adoption. She 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. 00XX31 dated 1st March 2023 declaring the child free for adoption. The Court appointed a Guardian Ad litem R Y.
7. The Guardian Ad Litem, R Y 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 7th June 2007 as per the birth certificate annexed serial number 8231525 to the late R N M and R N N. The minor's father died on 1st May 2020 as per death certificate serial number 11XXX07. Before his demise, her parents had separated and their mother had been married along the Kenyan coast. The deceased had the custody of the children. The child and elder sibling were taken in by the applicant after the death of their father and she has lived with them ever since. She attends school at [particulars withheld] where she is in form 3 and she lives in the applicants' house in Kisii Township.
9. The proposed Legal Guardians J M AND K O attended court and confirmed they are willing to take up the role of legal guardian. J M is the sister of the 1st applicant and K O 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. By public or private social welfare institutions, courts of Law, administrative authorities, or legislative bodies—
- (1)
- 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;

115. 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 V M M AND E N O be allowed to adopt J N.
- II. The Child is to be known as J N.
- III. The Child be presumed to be a Kenyan citizen by birth born on 7th June 2007 Kisii Central District.
- IV. J M AND K O are 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 27TH DAY OF OCTOBER, 2023.

P. NYAUNDI

JUDGE

