



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**In re LCM (Adoption Cause E005 of 2018)  
[2023] KEHC 27288 (KLR) (19 December 2023) (Judgment)**

Neutral citation: [2023] KEHC 27288 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAJIADO  
ADOPTION CAUSE E005 OF 2018  
SN MUTUKU, J  
DECEMBER 19, 2023  
IN THE MATTER OF CHILDREN (ADOPTION) REGULATIONS 2005  
AND**

**IN THE MATTER OF**

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

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

**JUDGMENT**

**The Application**

1. DH and RMH, the Applicants, are seeking to adopt LCM, through Originating Summons dated 25<sup>th</sup> July, 2018 and filed in court on 20<sup>th</sup> July, 2018.
2. They have based their application through various provisions of the law and are seeking the following orders:
  - i. That this Honourable Court be pleased to appoint Winfred Syombua of P.O BOX xxxxx – 00504, Nairobi as Guardian as Guardian Ad Litem for LCM.
  - ii. That the Children Officer, Kajiado North Sub-County, investigate the propriety of the Applicants’ fitness to adopt LCM and file a report.
  - iii. That the Applicants be authorized to adopt LCM.
  - iv. That upon adoption, the child be known as LCH.
  - v. That the Registrar of Births and Deaths do cause entry to be made in the Adoption Register with regard to this child and that the child be considered as a Kenyan Citizen.
  - vi. That the costs of this application be costs in the cause.



## Background Information

3. In support of the Originating Summons, the Applicant has filed a statement dated 26<sup>th</sup> July, 2018 showing that the minor, LCM, was born on 13<sup>th</sup> April, 2008; that the minor's biological father is the brother in law and biological brother to the applicants respectively; that the Applicants are married and solemnized their marriage on 22<sup>nd</sup> December, 2016; that they have 2 biological children, JBH and WWH; that they have lived with the minor from February, 2009 and that they have assumed parental responsibility of the minor.
4. The Statement further shows that through the Children's Court in Ngong the Court issued an order granting the Applicants, custody, care and control of the minor; that Change Trust subsequently issued them with the fitness certificate; that they are physically and emotionally fit and therefore competent to care for the minor; that they have neither been charged with, nor convicted of, a criminal offence. They have attached and Certificates of Good Conduct marked DRH from the Directorate of Criminal Investigations and that they both hold American and Kenyan passports numbers xxxxxxxxxxx and Axxxxxx respectively.
5. The Applicants were cleared fit to adopt the minor vide a Certificate number xxxxx dated 5<sup>th</sup> June, 2018 by Child Trust Agency. They have proposed DAO, a family friend, as legal Guardian of the minor. They have stated that DAO is fit, able and willing to act in the capacity of legal guardian. I have noted that DAO has consented to be so appointed as Legal Guardian through a letter of consent dated 25<sup>th</sup> July, 2018.
6. This court appointed WNK as Guardian Ad Litem upon application by the Applicant and directed that the Guardian Ad Litem and the Director Department Children Services investigate the suitability of the Applicants to adopt the minor and file their respective reports within 45 days. I have confirmed that both reports are in the court file.
7. The Guardian Ad Litem's report is dated 5<sup>th</sup> July, 2023. It was filed on 12<sup>th</sup> July, 2023. It shows that she has constantly visited the Applicants' home both in Kenya and Rwanda and has observed that the Applicants take good care of the minor; that they have treated the minor like their own biological child; that they have enrolled the child in good schools and that the Applicants are fit to be adoptive parents of the minor.
8. The report from the Children Services is dated 25<sup>th</sup> April, 2022. It is prepared by Samwel Masese, County Coordinator Children Services. The report recommends that the Applicant has met the prerequisites for adoption as provided in section 185 and 186(1)(2)(a) of the *Children's Act* of 2022. The report also recommends that the Applicants be granted the orders sought and be allowed to adopt the child as they have shown their capability to do the same.

## Analysis and Determination

9. It is clear from the court records that the second Applicant, RMH, is an aunt to the minor. She is sister to the minor's biological father JBM whom the court was told had passed on recently. This court is not able to confirm that because no document has been tendered in court to support the same despite the court asking that a death certificate or any other document be supplied to the court. I however note that from the court records, JBM had given his consent to have the minor adopted by the Applicants herein.
10. The court record also shows that the minor was neglected prior to his being taken into the care and protection of RMH and her husband who are the Applicants. I have seen a report dated 6<sup>th</sup> October 2017 by John Makenge, Senior Chief Mbeere North Sub-County confirming that the child



was neglected by his biological parents. I have seen affidavits from both parents EMN, the mother and JBM, the father, both consenting to the adoption of their son by the Applicants.

11. The law under section 185(1) (2) of the *Children Act* (No. 29 of 2022) provides that: -
  1. Any child who is resident within Kenya may be adopted whether or not the child is a Kenyan citizen, or was born in Kenya.
  2. Without prejudice to the generality of subsection (1), no Court may entertain an application for an adoption order in respect of a child unless —
    - (a) the child concerned has been in the continuous care and control of the applicant within Kenya for a period of three consecutive months preceding the filing of the application; and
    - (b) the application for an adoption order is supported by a report made by a duly registered adoption society recommending that an adoption order be made.
12. From the records in the court file, the minor has been under the care of the Applicants his whole life thereby complying with this requirement.
13. The Applicants herein have demonstrated that they comply with the age requirements being 68 and 43 years respectively as per section 186(2) of the *Children's Act*. I have noted, however, that though the first applicant is now 68 years he was 63 years of age when this adoption cause was filed. Further section 186(3) of the *Children's Act* provides that 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. In this case the minor is a relative to the 2<sup>nd</sup> Applicant.
14. Under Section 187 1(a) the Court may dispense with any consent required under section 186(8) paragraphs (a), (b) and (c) if the Court is satisfied that— (a) in the case of the parent or guardian of the child, the parent or guardian has abandoned, neglected, persistently failed to maintain or persistently ill-treated the child. However, as stated in this judgment, the biological parents of the minor abandoned him and consented to the Applicants to adopt him.
15. The cardinal requirement enshrined under Article 53(2) of the *constitution* and section 4(2) and (3) of the *Children's Act* is that the best interest of the child is of paramount importance in all decisions affecting the child.
16. International law also lays emphasis on the best interest of the child. The *UN Convention on the Rights of the Child* (CRC), which Kenya ratified on 30 July 1990, in Article 3 provides that: -
  1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
  2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
17. I have taken into account all the circumstances surrounding this adoption. It is clear from the records of the court that the minor was neglected by his biological parents. It is also clear that both have consented to the Applicants adopting the minor. This is kinship adoption as far as the 2<sup>nd</sup> Applicant is concerned



because of her relation to the minor by virtue of being his aunt. For this reason and taking into consideration the legal framework governing matters relating to the children, it is my considered view that it will be in the best interest of the minor that he gets a home where he can grow up surrounded by the love of family and under the care and protection of his adoptive parents.

18. The Originating Summons dated 25<sup>th</sup> July 2018 is hereby granted and an adoption order issued in the following terms:

- i. That the Applicants herein, DH and RMH, are hereby authorized to adopt LCM.
- ii. That upon adoption, the minor shall be known as LCH.
- iii. That the Registrar of Births and Deaths is hereby directed to cause an entry to be made in the Adoption Register with regard to the adoption of LCH.
- iv. That LCH is hereby considered a Kenyan Citizen.
- v. That DAO is hereby appointed Legal Guardian of the minor LCH.
- vi. That WS is hereby discharged from being Guardian Ad Litem.

19. Orders shall issue accordingly.

**DATED, SIGNED AND DELIVERED THIS 19<sup>TH</sup> DECEMBER 2023.**

**S. N. MUTUKU**

**JUDGE**

