



**In re BR (Minor) (Adoption Cause E032 of 2021)  
[2022] KEHC 3382 (KLR) (Family) (21 April 2022) (Judgment)**

Neutral citation: [2022] KEHC 3382 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
ADOPTION CAUSE E032 OF 2021  
LA ACHODE, J  
APRIL 21, 2022  
IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2011  
IN THE MATTER OF AN APPLICATION FOR THE ADOPTION OF PW (MINOR)**

**IN THE MATTER OF**

**EW ..... 1<sup>ST</sup> APPLICANT  
MWW ..... 2<sup>ND</sup> APPLICANT**

**JUDGMENT**

1. The applicants EW and MWW are in a monogamous marriage solemnized at [Particulars withheld] PEFA Church on June 13, 2010 as evinced in their Certificate of Marriage of Serial No. [Particulars withheld]. During their union, they sired four issues, namely SW (25 years), EW (24 years), GM (20 years), and IN (16 years).
2. The applicants are seeking the adoption of PW, a minor, through the Originating Summons dated March 3, 2021. The application is for a kinship adoption since the minor herein is a niece to the prospective parents. They are thus relatives within the extended family of the child. The Applicants are also seeking the adoption of FN (minor) who is a sibling to the subject minor in this case, through their application in Adoption Cause E 031 of 2021.
3. The court record indicates that the late SNN is the minor's biological mother, but the father's name was not included in the birth certificate Serial No. [Particulars withheld]. The court record shows that the mother died, as evidenced in the annexed Death Certificate Serial No. [Particulars withheld]. Consequently, the subject minor and her younger siblings were taken in by their uncle DK and his wife, , upon the demise of SNN.



4. The Director of Children Services filed a Report dated August 5, 2021 which indicates that the prospective adoptive father works for gain as a driver in the State of Arizona in the U.S. The report states that the applicants have a combined financial ability sufficient to cater for their children and the children they wish to adopt. The applicants also have a family house in Seattle, Washington, and another in Kitengela. They also have two plots in Ngong town. They profess the Christian faith.
5. Prior to the hearing of the adoption application, the Kenya Children Home Adoption Society prepared and filed a report dated March 4, 2021 and issued a certificate serial No. 1584 declaring the child to be free for adoption. The Court appointed a guardian ad litem Mary K. Konji, who filed a report dated August 15, 2021 recommending the adoption of the minor by the Applicants.
6. An officer from the Department of Children's Services office conducted home visits and prepared and filed a report dated August 5, 2021. The report findings indicate that the child currently lives with DK, her uncle, in Kinangop, Nyandarua County, but his house cannot comfortably accommodate the child, her sibling, and her uncle's children. He filed the report recommending the adoption of the minor by the Applicants. He gave the reasons that the Applicants do not have any criminal record and have financial means to provide for the minor. Further, that she will gain parents, grow up in a stable home and maintain ties with her kin.
7. This is a local kinship adoption, and from the record, the applicants have fulfilled all the legal requirements relating to the child's adoption. Specifically, section 158 of the [Children's Act of 2001](#) which requires that at least one of the adoptive parents shall be at least 25 years old and 21 years older than the child but not exceeding 65 years in age. The applicants meet this threshold in the case at hand since the adoptive father is 57 years old while the adoptive mother is 40 years old.
8. The minor's elder brother, Mr. SN, gave his consent for the Applicant to adopt the minor through the letter of consent dated October 22, 2020. He also swore an Affidavit consenting to the adoption of the child dated 10<sup>th</sup> November 2020. EM, the sister to the minor, also gave her voluntary to the minor's adoption by the Applicant vide a letter to the CEO of the Kenya Children's Homes Adoption Society. The child being aged above 14 years also filed her consent dated November 9, 2020 agreeing to be adopted by the applicants. Paul Nganga Njoroge and Esther Waithira Minjua consented to be appointed as the legal guardians of the minor in case of death or incapacitation on the part of the Applicants. They consented in the affidavit dated March 3, 2021.
9. Article 53 of the [Constitution](#) of Kenya 2010 provides overarching principles which must apply whenever any decision concerning a child is to be considered. The [Constitution](#) of Kenya 2010 categorically provides that:

“A child's best interests are of paramount importance in every matter concerning the child.”

This principle finds a firm place in the law in section 4(2) and 4(3) of the [Children's Act](#) No. 8 of 2001 and is echoed by article 4 of the [African Charter on the Rights and Welfare of the Child](#) which provides that:

“In all actions concerning the child undertaken by any person or authority, the best interests of the child shall be the primary consideration.”

10. I have examined the evidence herein, bearing in mind the pivotal focus of the child's best interest, and there is no doubt in my mind that it serves the child's best interest for the applicants to adopt her. In light of the preceding, I allow the prayers sought in the Originating Summons dated March 3, 2021 and order as follows:



- i. The applicants EW and MWW be and are hereby allowed to adopt PW (the Child), who shall continue to be known as PW.
- ii. The minor's date of birth is November 4, 2004.
- iii. Paul Nganga Njoroge and Esther Waithira Minjua of Kenyan National Identification Card Number 21xxx and 22xxxx respectively be and are hereby appointed as legal guardians of the child PW in case of death or incapacitation of the Applicants.
- iv. The Registrar General be and is hereby directed to enter this adoption into the Register of Adopted Children.
- v. The Director of Immigration be and is hereby authorized to issue the minor PW with a Kenyan passport.
- vi. The guardian ad litem is hereby discharged.

**SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 21<sup>ST</sup> DAY OF APRIL, 2022.**

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**L.A. ACHODE**

**HIGH COURT JUDGE**

**In the presence of .....Advocate for the Applicants**

