



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re FN(Minor) (Adoption Cause E031 of 2021)  
[2022] KEHC 3184 (KLR) (Family) (21 April 2022) (Judgment)**

Neutral citation: [2022] KEHC 3184 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
ADOPTION CAUSE E031 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  
FN (MINOR)  
BY  
EWW AND MWW (APPLICANTS)**

**JUDGMENT**

1. The Applicants are in a monogamous marriage solemnized at [Particulars withheld] Church on 13<sup>th</sup> June, 2010, as evinced in the Certificate of Marriage Serial No. xxxx. They have four biological children, namely SW (25 years), EW (24 years), GM (20 years), and IN (16 years).
2. This is a kinship adoption since the Applicants are the uncle and aunt to FN, the subject minor, whom they seek to adopt vide the Originating Summons dated 3<sup>rd</sup> March, 2021. They are thus relatives within the extended family of the child. The Applicants are also seeking to adopt P W (minor) who is a sibling to the subject minor in this case, through their application in Adoption Cause E 032 of 2021.
3. From the court records, the minor was born on 10<sup>th</sup> October, 2006 to the late SNN. The Child's biological father's name was not indicated on the birth certificate Serial No. xxxxx. The minor's biological mother died on 20th September 2020, as shown in the annexed Death Certificate serial number xxxxx. Since then, the child has been under the care of her uncle DK and her aunt, MN.
4. From the pleadings, the court gathers that the prospective adoptive father works as a driver in the State of [particulars withheld] in the U.S, whereas the prospective adoptive mother is a caregiver employed by Home Well Care. The records before the court indicate that the Applicants have a combined financial ability sufficient to cater for their children and the children they are seeking to adopt. The



Applicants have a family house in Seattle, Washington, and another in [particulars withheld], Kenya. They also own two plots in Ngong town in Kenya.

5. Prior to the hearing of the adoption application, the Kenya Children Home Adoption Society prepared and filed a report dated 4<sup>th</sup> March, 2021, and issued a certificate serial No. xxxx declaring the child free for adoption. The Court appointed a guardian ad litem MKK, who filed a report dated 15<sup>th</sup> August 2021, which was favorable, and recommended the adoption of the minor by the Applicants.
6. An officer from the Department of Children Services office conducted home visits and prepared a report dated 5<sup>th</sup> August, 2021. The information established that the child lives with her uncle, DK, in his house in [particulars withheld] , Nyandarua County. The report states that the house is too small to cater for the child, her sibling, and her uncle's children. The officer recommended the Adoption of the minor by the Applicants. He established that the Applicants have the financial means to provide for the upkeep and education of the minor. That she will gain parents, grow up in a stable home and the child will also maintain ties with her kin. The Applicants were found to have fulfilled all the legal requirements for adoption.
7. This is a kinship adoption. Under the guidelines for Alternative Family Care of the Children in Kenya on page 153, kinship adoption is defined as adoption by adopters who are kin or relatives within the child's extended family.
8. After carefully assessing the records herein, I am satisfied that the applicants have fulfilled all the legal requirements relating to the child's adoption. Section 158 of the *Children's Act 2001* provides that adoption will be lawful, in the case of joint Applicants, where at least one of the joint Applicants:
  - (a) has attained the age of twenty-five years and is at least twenty-one years older than the child but has not attained the age of sixty-five years; or
  - (b) is a relative of the child.
9. The Applicants are 57 years and 40 years old respectively hence each is above the age of 21 years, but below 65 years of age. Additionally, they are relatives of the child, as noted earlier.
10. The minor being aged 15 years gave her consent to be adopted by the Applicants vide a Letter of Consent dated November 9, 2020. EM, a sister to the minor, also consented to the adoption through a Letter of Consent dated 22<sup>nd</sup> October, 2020. PNN and EWM consented to be appointed as the legal guardians of the minor through a Letter of Consent dated 10<sup>th</sup> November, 2020. The minor's elder brother, Mr. SN, gave his consent for the Applicant to adopt the minor through the letter of consent dated 22<sup>nd</sup> October, 2020. He also swore an Affidavit consenting to the adoption of the child dated 10<sup>th</sup> November, 2020.
11. Article 53 of the *Constitution of Kenya* 2010, provides overarching principles which must apply whenever any decision concerning a child is to be considered. It states 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.”



12. From 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 March 3, 2021 and order as follows:

- i. The Applicants EWW and MW be and are here hereby allowed to adopt FN (the child), who shall continue to be known as FN.
- ii. The minor's date of birth is 10<sup>th</sup> October, 2006.
- iii. PNN and EWM ID NO. xxxxxx and xxxxxx respectively be and are hereby appointed as legal guardians of the child FN 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 FN with a Kenyan Passport.
- vi. The guardian ad litem is hereby discharged.

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

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**L.A. ACHODE**

**HIGH COURT JUDGE**

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

