



REPUBLIC OF KENYA



KENYA LAW
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**In re LK (Minor) (Adoption Cause E038 of 2021)
[2022] KEHC 447 (KLR) (Family) (21 April 2022) (Judgment)**

Neutral citation: [2022] KEHC 447 (KLR)

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

FAMILY

ADOPTION CAUSE E038 OF 2021

LA ACHODE, J

APRIL 21, 2022

IN THE MATTER OF AN APPLICATION FOR THE ADOPTION OF

LK (MINOR)

BY

EMO (APPLICANT)

JUDGMENT

1. The Applicant, EM, moved this court vide an Originating Summons dated 16th April, 2021, seeking the adoption of LK, the minor as a sole Applicant. The Applicant is also seeking to adopt Baby JA in Adoption Cause E 037 of 2021 and Baby DO in Adoption Cause E 039 of 2021, both being siblings to the subject minor in this cause.
2. The Director of Children Services filed a Report dated 17th November, 2021 which indicates that the Applicant is a Kenyan citizen who resides in [Particulars Withheld] Estate in Nairobi County. He is employed in a transportation company and professes the Christian faith.
3. The court records indicate that the minor in this matter was born to ENO on 14th April, 2018, as evinced by the birth certificate serial xxxxxxxxx. Her biological mother is not employed and the whereabouts of the child's father are unknown. The mother conceived her following a brief relationship with the father while she was in a subsisting marriage with the father of her second child. The details of her father are not known to the mother, who is not in gainful employment and is unable to cater for the minor hence this adoption case.
4. Prior to the adoption application, the Kenya to Kenyan Peace Initiative Adoption Society (KKPI) prepared a Certificate declaring the child free for adoption on 15th November, 2021. The guardian ad litem Mr. FB prepared and filed a report dated 2nd November, 2021, which was favorable and recommended the adoption.



5. An officer from the Director of Children Services office conducted home visits to the Applicant's home in [Particulars Withheld] and prepared a report dated 17th November 2021. She reported that the Applicant lives in a three-bedroom house, and the child had her own bedroom, while the other siblings shared one bedroom but slept individually. The Report depicted the child to be very joyful, healthy, social, and very talkative during the visit by the children's officer. The Children's Officer also reported that the Applicant is emotionally and financially capable of providing for the upkeep and education of the child.
6. The Applicant in this case is a single male, wishing to adopt a female child. Section 158(2) of the [Children Act](#) is categorical that an adoption order shall not be made in favour of a sole male applicant in respect of a female child unless the court is satisfied that exceptional circumstances exist to justify the making of such an adoption order.
7. The Adoption Committee established under Section 155(1) of the [Children Act](#) issued guidelines on 13th January 2010 concerning circumstances that the court should consider in determining that the set of facts put forward by the Applicant fulfills the criteria of exceptional circumstances. The Ministry of Gender, Children and Social Developments Adoption Committee issued the "Guidelines for Special Circumstances by the Adoption Committee."
8. Category III of the guidelines provide for the exceptional circumstances in respect of a sole male Applicant adopting a female child as follows:
 - i. Where the child is a relative
 - ii. Where the Applicant has other biological or adopted children over whom he is willingly exercising parental responsibility.
 - iii. Where the Applicant is the legal guardian of the child or children appointed by will or in adoption proceedings and the parents die or become permanently incapacitated.
9. The facts of this case are that the Applicant is not only related to the child as his maternal uncle, but also wishes to adopt other siblings with whom he already lives in [Particulars Withheld] and provides for, as stated in the Director of Children Services Report. He, therefore, meets the threshold under part (ii) of the Adoption Guidelines.
10. Section 158(1) of the [Children Act](#) 2001 requires that a sole male Applicant wishing to adopt a female child should have 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 65 years. From the factsheet, the Applicant is 43 years old, hence he is above the age of 25 years. He is 21 years older than the child who is 3 years old but is below the age of 65 years.
11. The report of the Guardian ad litem dated 2nd November, 2021 also established that the Applicant underwent a medical evaluation required under Regulation 18(2) of the Child Adoption Regulations 2005. The findings show Applicant to be of sound mind, in compliance with Section 158(3) of the [Children Act](#) 2001.
12. ENO, the biological mother also gave her consent dated 29th October of 2021, where she assented to the adoption. She admitted to facing financial constraints that rendered her unable to cater for the child and the child's father had absconded from his parental responsibility.
13. FBO was appointed to act as a Guardian ad Litem in the proceedings before the court. His consent dated 16th April, 2021 and GMN reinforced his fitness to be appointed as such. IO consented vide the letter dated 27th October, 2021 consented to be appointed as the legal guardian to act if need arose.



14. It is important to note that the orders sought by the Applicant herein relate to a child. In law, in any matter concerning a child, the child's best interests are of paramount importance. 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.”

15. The Applicant has been declared suitable and capable of providing shelter, education, medical care, food, clothing, and nurturing care necessary for the comfortable growth and development of a child. There is no doubt in my mind that the Applicant has met the requisite conditions to adopt the baby and that the adoption is ultimately in the best interests of the child.

16. Accordingly, the Originating Summons dated 16th April 2021 is found to have merit and is hereby allowed with orders as follows:

- i. The Applicant EMO be and is hereby allowed to adopt baby LK and the child shall be known as LKO after the adoption.
- ii. FBO be and is hereby appointed Legal Guardian of the child in case of the death or incapacitation of the Applicant.
- iii. The Registrar General be and is hereby ordered to make appropriate entries in the Adopted Children Register in respect of LKO.
- iv. The child's date of birth is 14th April, 2018.
- v. The child was born in Kenya of Kenyan parents and is, therefore, a Kenyan by birth.
- vi. The Director of Immigration be and is hereby authorized to issue the child with a Kenyan Passport.
- vii. The guardian ad litem is hereby discharged.

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

L.A. ACHODE

HIGH COURT JUDGE

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

