



REPUBLIC OF KENYA



KENYA LAW
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**In re SWK (Child) (Adoption Cause E014 of 2022)
[2022] KEHC 13978 (KLR) (Family) (29 July 2022) (Judgment)**

Neutral citation: [2022] KEHC 13978 (KLR)

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

FAMILY

ADOPTION CAUSE E014 OF 2022

M THANDE, J

JULY 29, 2022

IN THE MATTER OF THE CHILDREN'S ACT (NO. 8 OF 2001)

AND

IN THE MATTER OF SWK

AND

AN APPLICATION FOR ORDERS OF ADOPTION OF SWK

BY

AONN

JUDGMENT

1. SWK the child herein was born on March 29, 07 to JMM and JKW. The child's mother was in 2017 diagnosed with a serious heart condition that has rendered her incapable of taking care of the child. She currently resides in Dubai where she is under medical care. The child's father works in Qatar and is unable to discharge his parental responsibility towards the child. The illness took a toll on the family emotionally and financially and the applicant AONN stepped in to assist his brother. The applicant has since been taking care of the child as well as her brother AON. The applicant is a businessman in the United States of America and maintains a home there and another one in Muchatha, Kiambu County in Kenya.
2. The applicant, wishes to provide a stable home for the child and enable her continue with her education and achieve her dream of becoming a cardiologist. To this end, the applicant has moved this court by his Originating Summons dated March 2, 22, seeking to adopt the child.
3. This is a kinship adoption as the applicant is a brother to the child's father. Kenya Children's Home Adoption Society, the registered adoption society which arranged the adoption declared the child free for adoption on December 19, 22 vide certificate serial no xxx.



4. By an order of June 30, 33, this court appointed LWK as the *guardian ad litem* for the child pending the hearing and determination of the adoption application in accordance with section 160 of the *Children Act*.
5. To facilitate this adoption, the applicant was assessed by Kenya Children’s Home and taken through the adoption process and its implications. The society filed its report recommending the adoption of the child by the applicant. Also filed was the report of the director of Children Services dated July 13, 22 by CO, senior children officer and countersigned by Hoyd Isadia, deputy director. On her part, LWK the *guardian ad litem* filed her report dated July 8, 22. All these reports are favourable and recommend the proposed adoption.
6. The applicant is not younger than 25 years nor older than 65 years. He is more than 21 years older than the child. Section 158 of the *Act* has thus been complied with. The applicant has been made aware of the consequences of an adoption order as well as the rights of an adopted child. He shall assume all parental rights and duties of the biological parents in respect of the child. I am satisfied that he fully understands that the adoption order is final and binding during the lifetime of the child and that he cannot under any circumstances give up the child. The applicant also understands that the child shall have the right to inherit his property alongside his biological daughter. The applicant has demonstrated that he has the psychological and emotional capacity as well as the material resources to raise the child in a loving home environment.
7. JKW and his wife JMM signed their separate consents to the adoption, dated November 29, 21. They stated that due to J heart condition, they are unable to take care of the child and are willing to have her adopted by the applicant. At the hearing, they confirmed to their court their willingness to have the child adopted by the applicant.
8. The child is 15 years old having been born in 2007. Accordingly, being above the age of 14 years, her consent to be adopted is required under section 58 of the *Act*. The child signed her consent dated November 29, 21, which is on record. At the hearing, the child informed the court that she wished to be adopted by the applicant who she referred to as “DO”, and who has been a great mentor to her. She further stated that her parents have not been able to support her and that the applicant has been guiding her. She was happy that the applicant has enabled her to go to school and has paid for her mother’s treatment.
9. The applicant is a single male who seeks to adopt a female child. The *Children’s Act* at Section 158(2) provides 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 there are special circumstances to justify the making of the order. The national adoption committee formulated guidelines which the court may take into consideration, while considering whether special circumstances exist to justify allowing a sole male applicant to adopt a female child. The special circumstances as set out in the guidelines are:
 - i. When the child is a relative,
 - ii. When the child has special needs and the applicant is willing and has capacity to take care of the child,
 - iii. Where the applicant has adopted or has another biological child or children over whom she is willingly exercising parental responsibility,
 - iv. Where the child to be adopted has a sibling who is also being adopted by the applicant,
 - v. The applicant is the only person available to adopt the child, and



- vi. 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.
10. In the present case, it is evident that special circumstances do exist. The child is a relative of the applicant, who is her paternal uncle. Additionally, the applicant has his own biological daughter over whom he is willingly exercising parental responsibility. Further, the applicant is the only person available to adopt the child. It is noted that when the biological mother of the child relocated to Dubai where she is able to access medical treatment and her father went to Qatar to work, the child was left with the applicant's mother. Both live in the applicant's house in [particulars withheld], Kiambu County. The applicant has since taken over the parental responsibility of the child and indeed of her elder brother who lives with him in the United States of America. I am therefore satisfied that special circumstances do indeed exist to justify the making of an adoption order in this case.
 11. As I consider the application before me, I am mindful that the guiding principle is the best interests of the child as enshrined in article 53(2) of the Constitution which provides:

A child's best interests are of paramount importance in every matter concerning the child.
 12. After a careful assessment of the reports filed and the circumstances herein, this court has formed the opinion that it would be in the best interest of the child to be adopted by the applicant who will provide a home and a family for the child to belong to, through which she will become a useful member of the society at large and achieve her dream of becoming a cardiologist.
 13. The court is further satisfied that all the legal requirements for a local and kinship adoption have been met and makes the following Orders as prayed in the amended Originating Summons:
 - a. The applicant AONN holder of national identity card number xxxx is hereby allowed to adopt SWK.
 - b. I direct the registrar general to enter this order in the adoption register.
 - c. The appointment of LWK, the *guardian ad litem* now stands expired.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 29TH DAY OF JULY, 2022

M THANDE

JUDGE

In the presence of: -

..... for the applicant

..... court assistant

