



REPUBLIC OF KENYA



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

**In re of LN (Minor) (Adoption Cause E153 of 2021)
[2022] KEHC 13507 (KLR) (Family) (23 September 2022) (Judgment)**

Neutral citation: [2022] KEHC 13507 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E153 OF 2021
MA ODERO, J
SEPTEMBER 23, 2022
IN THE MATTER OF THE CHILDREN'S ACT 2001
IN THE MATTER OF ADOPTION OF LN (MINOR)
IN THE MATTER OF THE APPLICATION BY FIM AND RNG**

JUDGMENT

1. Before this court is the originating summons dated November 1, 2021 by which the applicants FIM and RNG seek the following orders:-
 - “ 1. That the applicants be authorized to adopt the child currently known as LN.
 2. That upon making of the adoption order the said child be known as LN
 3. That this honourable court be pleased to invoke section 159 as read with section 158 of the *Children Act* and dispense with the consent of the father of the minor herein.
 4. That the Registrar General makes the appropriate entries in the Adopted Children Register.
 5. That WS and ZIM be appointed legal guardian of the child LN.”
2. The application was supported by the statement of even date sworn by the applicants. The matter was canvassed by way *viva voce* evidence on the virtual platform.
3. The applicants are a couple who got married in the year 2018. They have no biological child of their own. The applicants seek to adopt the subject child who is a seventeen (17) year old girl and is the daughter of the 1st applicant's older sister.



4. The applicants both confirm that they do understand the legal implications of an adoption order. They undertake to accord to the subject child all rights which are due to a biological child including the right to inherit.

Analysis and Determination

5. The prerequisites for adoption are set in section 156(1) of the Children's Act 2001, which provides as follow: -
 - “156(1) No arrangement shall be commenced for the adoption of a child unless the child is at least (6) weeks old and has been declared free for adoption by a Registered Adoption Society in accordance with the rules prescribed in that behalf.”
6. The subject child was born in Nyeri Kenya on August 3, 2005. A copy of her Birth Certificate serial number xxxx is annexed to the summons. She is now aged seventeen (17) years and is well above the six (6) week age limit provided for in law.
7. Change Trust which is a registered Adoption Agency have annexed to their report a copy of their certificate serial number xxxx dated July 2, 2021 declaring the child free for adoption. Accordingly, I find that the legal prerequisites for adoption have been met.
8. The duty of this court is to analyze the evidence in order to determine whether the applicants are suitable adoptive parents. The applicants are both Kenyan citizens. They have annexed to the summons certified copies of their national identify cards (Annexure FIM '1').
9. The applicants are a couple who got married to each other in Pennsylvania USA on July 11, 2018. A certified copy of their Marriage certificate issued by the Common Wealth of Pennsylvania on October 18, 2018 is annexed to the summons (Annexure FIM '3'). The applicants have no biological child of their own. They wish to adopt their niece whom they have been supporting and providing for since birth.
10. The applicants are citizens of Kenya but they reside and work in USA. The 1st applicant works as an administrator with the [Particulars Withheld] whilst the 2nd applicant is self employed as a real estate consultant. Together they realize a combined monthly income of approximately Kshs 500,000 which is sufficient to provide for the needs of a growing child.
11. The applicants are both Muslims as is the child. They intend to raise the child in the Islamic faith. Both applicants were examined by a doctor and were found to be mentally and physically fit.
12. The applicants told the court that the subject child is their niece whom they have been providing for since her birth. That the child's mother who is the 1st applicant's sister is a casual trader who is not in a position to meet all the needs of the child. They wish to adopt the child in order to provide her with a better future.
13. The applicants stated that the child's biological mother has consented to the adoption. That their families support the adoption. They have appointed their sister and brother-in-law of the 1st applicant and ZIM as the legal guardians for the child. The proposed legal guardians have both sworn an Affidavit of consent dated November 1, 2021 confirming their willingness to act as legal guardians for the child.



14. Finally the applicants have annexed Police Clearance Certificates issued to them by the Directorate of Criminal Investigations proving that neither has a criminal record. All in all I am satisfied that the applicants are suitable adoptive parents.
15. The subject child is the seventeen (17) year old niece of the 1st applicant. The applicant told the court that they have been providing for all the needs of this child since she was born. They have annexed copies of remittances made to the child's mother through Sendwave mobile application
16. Section 158(4)(a) of the *Children Act*, 2001 provides as follows:-
 - “(4) Subject to section 159 an adoption shall be accompanied by the following written consents to the making of an adoption order in respect of any child-
 - (a) the consent of every person who is a parent or guardian of the child, or who is liable by virtue of any order or agreement to contribute to the maintenance of the child.”
17. The child's biological mother ZIM testified in court. She confirmed that the 1st applicant was her younger sister and confirmed that she has been receiving support for the upkeep and education of the child since she was born. The mother stated that she is fully aware of this application for adoption and wholeheartedly supports the same.
18. The child's biological mother did sign a consent dated November 1, 2021 and has also sworn an Affidavit of consent dated November 1, 2021. The mother confirmed that she was aware that an adoption order once made cannot be reversed. I am satisfied that the consent of the mother was obtained as required by law.
19. Regarding the child's biological father whose name was given as MGM the mother stated that they were not married. The mother told the court that she and the child's father parted ways in the year 2013 when the child was only eight (8) years old. That the father abandoned the mother when she delivered their second daughter and has made no attempt to see or communicate with the child. Since the year 2013 the father has made no effort to see or communicate with the child. He has provided no maintenance for her upkeep or education.
20. It is clear that the biological father has abandoned the child. The mother has raised the child alone. In the circumstances, I waive requirement for the consent of the father in line with section 159(1)(a) of the *Children Act* which provides as follows:-

Power to dispense with consent

 - (1) The court may dispense with any consent required under paragraphs (a), (b), and (c) of subsection (4) of section 158 if it is satisfied that—
 - (a) in the case of the parents or guardian of the child, that he has abandoned, neglected, persistently failed to maintain or persistently ill-treated the child.”
21. Section 76(3)(a) of the *Children Act* 2001 provides as follows:-
 - “(3) Where the court is considering whether or not to make an order with regard to a child, it shall have particular regard to the following matters—
 - (a) The ascertainable feelings and wishes of the child concerned with reference to the child's age and understanding.” (own emphasis)



22. I was able to see and interview the child online. She was old enough to speak for herself. The child informed the court that she was in Form 3 at [Particulars Withheld]Girls High School. She confirmed that she has only seen her father once since he left the family and that she has had no contact with her father or his relatives.
23. The child told the court that she was aware of and fully supported the applicant by her aunt and uncle to adopt her. She confirmed that the applicants have been paying her school fees. The child stated that she was happy and excited to be adopted by the applicants whom she knows very well. Annexed to the summons is a consent signed by the minor dated November 1, 2021. It is clear that the subject child has consented to her adoption by the applicants.
24. In deciding upon any matter involving a child, courts are obliged to give priority to the best interests of the said child. Section 4(2) of the Children Act 2001 provides:-
- “(2) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration”. (Own emphasis)
25. This is a ‘Kinship adoption.’ The child will remain within the same family unit. The applicants are not strangers to the child. She has known them all her life and already has a bond with the applicants. The child's biological mother is a single mother who is not able to fully provide for the needs of the child.
26. I have perused the reports prepared by the *guardian dd litem*, the Adoption Agency and the Director Childrens Services. All three reports are positive and all recommend the adoption. Finally, I find that this adoption serves the best interests of the child. Accordingly, I do allow this application and make the following orders:-
1. The applicants FIM and RNG are authorized to adopt the child known as LN.
 2. Upon adoption order the child be known as LN.
 3. The requirement for consent of the biological father is dispensed with in line with section 159 (1)(a) Children Child 2001 as read with section 158 of the Children Act.
 4. The child is a Kenyan citizen by birth and is entitled to all the rights and benefits in respect thereto.
 5. The Registrar General is directed to make the relevant entry in the Adopted Children’s Register.
 6. WS and ZIM are appointed legal guardians for the child.”

DATED IN NAIROBI THIS 23RD DAY OF SEPTEMBER, 2022.

.....
MAUREEN A ODERO
JUDGE

