



**In re MF (Minor) (Adoption Cause E003 of 2022)
[2022] KEHC 15499 (KLR) (18 November 2022) (Judgment)**

Neutral citation: [2022] KEHC 15499 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
ADOPTION CAUSE E003 OF 2022
CM KARIUKI, J
NOVEMBER 18, 2022
IN THE MATTER OF ADOPTION OF(MINOR) M F AKA R N**

JUDGMENT

1. By Originating Summons dated July 6, 2022, the Plaintiffs/Applicants seek the following prayers. That the consent of the minor's biological parents herein be dispensed with since the child was found abandoned and efforts to trace the parents have since proved futile.
2. That the applicants herein be authorized to adopt the said child and the child be henceforth called RN.
3. That the child is presumed to be a Kenya Citizen, having been found in Kenya at the time of birth.
4. That the Registrar-General make the appropriate entries in the Adopted Children's register in respect of the minor, and further, the Registrar of Births and Deaths issue a Birth Certificate in relation thereof.
5. That the guardian ad litem AMA be discharged, and BPM be appointed as the minor's legal guardian if the applicants herein are in any way incapacitated or in any way unable to discharge their parental obligations. That the court does issue such other orders as may be necessary for the best interest of the child.
6. The same is supported by the three (3) grounds on the Originating Summons and also affidavits of JNK and SNN sworn on July 6, 2022 Affidavit of means for JNK sworn on July 6, 2022. And also, a statement is supporting an application for an adoption order dated July 6, 2022.
7. The Children's Officer Nyandarua filed a report dated October 28, 2022 recommending the grant of orders sought.
8. The Applicants testified and called two (2) more witnesses. They also produced the child's subject matter for the court to view and observe.
9. On the close of their case, the Court directed the applicants to file skeleton submissions.



Determination

11. The Applicants herein, JNK & SNN, wishes to be authorized to adopt a male child known as Moses Francis, and they would like the child to be known as Roman Nyaga. The child will be named after Sarah's dad. The applicants married on the November 11, 2014, at the Registrar's office.
12. The couple approached the Kenya children's home adoption society's office on the April 21, 2021, to be ratified for placement with two girls to adopt from any charitable children's institution within the Republic of Kenya. They had adopted another son, aged eight years, AKN, born on March 1, 2014. The society's case committee approved them as suitable potential adoptive parents on the May 19, 2021.
13. They were placed with an abandoned child, aka MF of Macheo Children's Home, on March 11, 2022. After a successful bonding at the said home, a care agreement was signed, and the same was attached before the placement.
14. The child MF was declared free for adoption by the agency case committee sitting on February 16, 2022. The freeing certificate is serial number 822, which was issued in compliance with Section 156 (1) of the *Children's Act* (2001). Annexed;
15. An initial police letter dated July 5, 2021 proving that the child was abandoned and the same was recorded in the occurrence book number xxxx marked as JNKSNN I
16. The child was referred to [particulars withheld] Children's Home through the sub-county children's office [particulars withheld] where he was admitted on the July 5, 2021. The referral letter and admission form, dated July 5, 2021 marked as Exh3 & JNKSNN II.
17. The clinic card is attached to prove that the child was in good health. The minor was committed at Macheo Children's Home as needing care, and protection vide case No 12 of 2021.
18. A final police letter dated January 5, 2022 Ngati Police Station confirmed that no one went to their office to claim for the abandoned minor, and their efforts to trace the minor's parents or relatives were futile.
19. The law provides that the prospective adopters are within the age required since they are both 42 years old and 21 years older than the child. None of them has reached the 65 years age limit, which complies with section 158(1)(9) of the Children's Act 2001. When the minor shall be 18 years old, the applicants will be around 57 years and still be vital in giving parental guidance to the prospective adoptive minor.
20. JNK and SNN have been examined medially and have been confirmed to be physically and mentally fit to raise children.
21. The couples have proven their ability to take care of and provide parental responsibilities to the minor herein, MF.
22. The child needed to be loved, cared and provided for. The child, about one year hence complied with section 156(1) of the Children's Act.
23. The underlying principle in making any legal decision involving a child is the 'best interests of the child.' The child herein has been with the applicants for eight months. They have bonded well with the applicants herein. A close bond has been forged between the child and his new family.
24. If the court were to disallow the application, the alternative would be to return the child to an institution which, in this court's view, would only serve to traumatize the child and would not provide



the child with the family environment necessary to enable him to mature into a responsible, happy and well-adjusted member of the society

25. Thus, the court finds that the instant originating summons has merit, and thus the same dated July 6, 2022 be and is hereby allowed as follows.
- i. The consent of the minor's biological parents herein be and is hereby dispensed with since the child was found abandoned and efforts to trace the parents have since proved futile.
 - ii. The applicants herein be and are hereby authorized to adopt the said child, and the child is henceforth called RN.
 - iii. That the child is presumed to be a Kenya Citizen, having been found in Kenya at the time of birth.
 - iv. That the Registrar-General make the appropriate entries in the Adopted Children's register in respect of the minor and further the Registrar of Births and Deaths issue a Birth Certificate in relation thereof.
 - v. That the guardian ad litem AMA be and is hereby discharged. BPM be appointed as the minor's legal guardian if the applicants herein are in any way incapacitated or in any way unable to discharge their parental obligations.

Dated, Signed, and **Delivered** at NYAHURURU on this 18th day of NOVEMBER 2022.

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CHARLES KARIUKI

JUDGE

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