



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**IN THE MATTER OF AN APPLICATION FOR ADOPTION**

**ADOPTION CAUSE NUMBER 16 OF 2021**

**IN THE MATTER OF THE ADOPTION OF EM(MINOR)**

**(CONSOLIDATED WITH)**

**ADOPTION CAUSE NUMBER 17 OF 2021**

**IN THE MATTER OF THE ADOPTION OF BO(MINOR)**

**VOO.....APPLICANT**

**J U D G M E N T**

1. The applicant herein VOO, 42 is the brother to SNO aged 29 years old. She is a person living with disability as she is deaf.
2. S is the mother to EM Date of Birth 3<sup>rd</sup> December 2003 and BO Date of Birth 13<sup>th</sup> March 2012.
3. The father or fathers to the two children is/are unknown and since they were born, the applicant has supported them and their mother who is dependent on him. He has provided for their upkeep and education, and provided shelter as well.
4. Through two Originating Summons dated 27<sup>th</sup> September 2021 he seeks to formalize this relationship by formally seeking an adoption order with respect to each of the minors.
5. He is supported in his application by his partner through Kisii Customary Marriage ANK, as the proposed legal guardian. Both are Kenyan Citizens by birth but they are domiciled in United States of America where they reside at [Particulars Withheld] Street, Lebanon New Hampshire. The applicant works at the [Particulars Withheld] Health & Rehabilitation Centre as a Nurse. They worship at [Particulars Withheld] Parish Roman Catholic Church.
6. Dr. WOO was appointed as the guardian *ad litem* in respect of both minors. He filed his report and gave oral testimony in court.
7. In support of this application the applicant filed the following documents;
  - i. *Copies of the national identity card ;*
  - ii. *Copies of the children's certificates of birth;*
  - iii. *Standard certificate declaring the children free for adoption;*
  - iv. *Copies of initial consent by the mother, explanatory memorandum for the biological parent/guardian, forms for social inquiry and certificates of acknowledgement;*
  - v. *Consents of the other relatives i.e. the grandfather and uncles of the two boys*
  - vi. *Copies of inquiry on prospective adopter form, medical particulars of the prospective adopter.*

vii. Proof of financial stability

viii. Proof of clean criminal record here and abroad

8. There is also on record reports filed by the Genesis Child & Family Inc. who made a home visit on the applicants at in Lebanon NH and filed a social infurated 29<sup>th</sup> November 2021, the Director of Children Services dated 1<sup>st</sup> December 2021. Both reports recommend the applicant and his partner as a suitable adoptive parent.

9. The Originating Summons was heard orally on 22<sup>nd</sup> November 2021 and 9<sup>th</sup> December 2021. This court heard the minor EM since he is above fourteen (14) years old to determine whether he understood the purport of the application and its overall effect on his future, and whether he had given his consent. It was evident that he understood the same and had freely consented to the adoption.

10. I also heard the mother, S who testified in sign language, and written notes where necessary. The minor BO was able to have a conversation with his mother on the issue. It was evident that the mother had consented to the adoption of her two (2) sons by her brother. She was aware that it meant that he would take over as their adoptive father and would perform all the duties of a father.

11. I heard the prospective father. From his testimony it was evident that he had supported his sister and her children for a long time. That taking adoption orders would only enable him to do more for his nephews as the father. His sister who is a single and unemployed was happy to let her brother take over. His partner was ready and willing to be the legal guardian for the children. The applicant has placed evidence before court of his financial ability, he has no criminal record, and his social standing both here and abroad is good. This is a Kinship adoption as defined in In re JNA [2018] eKLR, According to the Guidelines for Alternative Family Care of Children in Kenya page 153, "Kinship adoption is adoption by adopters who are kin or relatives within the extended family of the child."

12. It is usual in our communities for extended families to live with and support children of relatives who may not be in a position to raise their children for various reasons. More often than not those relations last longer than the childhood of the child involved. However, there are usually no permanent legal obligations attached to those relations and sometimes when the benefactors die those children who may still be in vulnerable situations lose their support, completely destabilizing their lives. Hence, the formalization of kinship adoptions is something that ought to be encouraged where it is clearly in the best interests of the child. This ensures stability for the child. In this case the two boys have not known any other father except their uncle the applicant. Their aunt has interacted with them and they appear ready to live as a family. Their mother will still have access to them as their adoptive father is her brother. It works well, taking into consideration her status.

13. The two boys have been declared free for adoption by KKPI Adoption Society.

14. Having carefully considered the material upon which these two Originating Summons, the applicant has a clean medical and criminal record. He is financially stable. His marital relationship with his partner appears to be stable and therefore suitable to be a basis of rearing children.

15. In Re Baby PSM [2020] eKLR, the court observed that:

***"The best interests of a child principle is the key consideration in determining the nature of any decision to be taken touching on the affairs of a child. This is a paramount requirement under Article 53(2) of the Constitution and Section 4(2) and (3) of the Children's Act (see Re of Baby KR (2015) eKLR 2015. Similar position was held in the case of In Re CA and KA (both minors) (2014) eKLR where the court held that:-***

***"It is therefore not in doubt that when a court determines any question with respect to:-***

***The upbringing of a child; or the administration of a child's property or the application of any income arising from it, the child's welfare shall be the court's paramount consideration."***

***19. In the instant case, the minor herein is a nephew to the applicants who is in need of support and provision of basic necessities like food, education, shelter, clothing and medical care among other provisions. The applicants have come in handy and at the hour of need. They and their children have fully bonded with the minor. They all understand the consequences of this adoption. It will be in the best interests of the child to be adopted by parents who are ready and willing to relieve the minor's biological parents a huge burden off their shoulder otherwise, the boy's bright future will be compromised if this application is rejected."***

16. In this case the children will be assured of a family, security and education and therefore this application has been made in the best interests of the children. The legal guardian has also confirmed that she is ready and willing to step in should the applicant be unable to discharge his parental responsibilities to the children.

17. For the above reasons, the applicant is fit and proper person to adopt the children, the subjects of these two applications under the Children Act.

18. Consequently, each of the applications made in **Adoption Cause 16 of 2021 and 17 of 2021** be and is hereby allowed and the following orders issue:

***(a) An order be and is hereby made authorizing the applicant VOO in Adoption 16 of 2021 to Adopt BO***

*(a) An order be and is hereby made authorizing the applicant VOO in Adoption 17 of 2021 to Adopt EM*

*(b) That ANK be and is hereby appointed the legal guardian of the child BO*

*(c) That ANK be and hereby appointed the legal guardian of the child EM.*

*(d) That DR. WOO, the guardian ad litem, be and is hereby discharged.*

*(e) That the Registrar General be and is hereby directed to make appropriate entries of each adoption into the Register of Adoptions and issue a certificate to that effect for each child.*

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 20TH DAY OF DECEMBER, 2021.**

**MUMBUA T MATHEKA**

**JUDGE**

**In the presence of:**

Court Assistant: Lepikas

Applicant

Mrs. Gatheca for Applicant