



**In re CM alias RK (Minor) (Miscellaneous Adoption Cause
E012 of 2023) [2025] KEHC 176 (KLR) (20 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 176 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS ADOPTION CAUSE E012 OF 2023
RN NYAKUNDI, J
JANUARY 20, 2025
IN THE MATTER OF AN ADOPTION OF: CM ALIAS RK – MINOR
AND
IN THE MATTER OF AN APPLICATION BY: IRA AND PNM**

RULING

1. By a chamber summons application dated 1st December, 2023 filed by the firm of P.D. Onyango & Co. Advocates and brought under the provisions of Part XIV of the *Children's Act* and *Rules* 4, 5 and 12 of the Adoption Rules 2020. The applicants seek orders as follows:
 - a. The applicants be authorized to adopt the minor CM alias RK.
 - b. That if the adoption order is granted, the child be called RK and the Registrar General to make an entry into the adopted children's register recording the adoption in accordance with particulars as shall be set out in the adoption order.
 - c. Costs of the application be in cause.
2. The grounds on the face of the Application are that:
 - a. The Children was given up for adoption by change trust adoption agency.
 - b. Following the child's being abandoned by the mother, the child was given to the applicants by change trust adoption agency on 14th November, 2015 and he has since been in their care.
 - c. That the child has a chance of living in a suitable family set-up that the applicants are willing and able to offer.
 - d. That no previous application has been made relating to the adoption of the child.
3. The summons is further supported by a joint statement by the applicants who stated that the child in question was found abandoned at a residential gate in Milimani estate, Kisumu, opposite Kisumu Royal Hotel with a good Samaritan. That the child was found with an attached note supposedly from



his biological mother in which she says that she was not able to care for him anymore. They deposed that the Change Trust Adoption Agency has given a declaration that the child is free to be adopted.

4. The applicants are Kenyan citizens. They formally got married on 7th August, 2009 at Sirikwa Pentecostal church. The Male Applicant is a valuation officer while the female Applicant is a Business manager. According to the Social Inquiry and Home study report, the applicants are a couple blessed with three biological children and are therefore able to get children. They want to adopt because they feel they have space in their life and are able to help a need child join the family and grow up in a family setting. They say their marriage is based on a foundation of strong Christian values and are currently members of Citam church, Kisumu where they are also striving to instil the same values to their children. They are, by the report produced in Court, financially capable and are perfectly willing to assume the responsibility of bringing up the Minor.
5. The state department for social protection through the Children's Officer did a background check on the suitability of the applicants to adopt the minor herein and through their report gave a recommendation as hereunder:

“ IAR and PNM have shown commitments to their ability and potential to take care, protect and provide for parental obligations over the minor herein. the child, who is observed to be stable physically, emotionally and mentally attests to knowing and relating very well with the applicants. The minor in this matter addresses the applicants as mum and dad. Their decision to adopt in my view is genuine and in the best interest of the child.

I therefore recommend that the child in this adoption matter CM alias RK be adopted by the applicants herein, IAR and PNM as per the legal requirements cited above.”

Determination

6. Upon comprehensive review of the case documentation, I confirm that the Applicants have satisfied all statutory prerequisites for the grant of Adoption Orders under Sections 158 and 163 of the *Children Act*. The record contains all required consents and reports confirming the minor's eligibility for adoption. Given that the biological parents remain certifiably unknown, their consent requirement is appropriately waived, while the necessary consents from both the proposed Guardian and the Applicants have been properly documented and filed with the court.

The applicable law

7. In considering this matter one cannot avoid to delve into the provisions of the *Constitution*, the children's Act including International/Regional Treaties and Conventions. To begin it Article 14(4) of the *Constitution* Provides as follows: “A child found in Kenya who is, or appears to be, less than 8 years of age, and whose nationality and parents are not known is presumed to be a citizen by birth. Whereas Section 8 of the *Children's Act* Provides: “ In all actions concerning children, whether undertaken by public or private social Welfare institution , courts of law, administrative authorities or legislative bodies:-
 - a. The best interests of the child shall be the primary consideration
 - b. The best interests of the child shall include, but shall not be limited to the considerations set out in the First Schedule.

All judicial and administrative institution, and all persons acting in the name of such institutions, when exercising any powers conferred under this Act or any other written law, shall treat the interests of



the child as the first and paramount consideration to the extent that this is consistent with adopting a course of action calculated to:-

- a. Safeguard and promote the rights and welfare of the child
 - b. Conserve and promote the Welfare of the child and
 - c. Secure for the child such guidance and correction as it necessary for the Welfare of the child, and in the public interest
8. For the applicants to succeed in being awarded an adoption order, the threshold in Section 186 of the *Children's Act* must be satisfied. It provides that for the court to make an adoption order on any application the following characteristics remain to be paramount.
1.
 - (a) Sole Applicant or,
 - (b) Two Spouses jointly
 2. The court shall not make an adoption order in any case unless
 - i. The applicant has attained the age of twenty-five years, but is not above the age of sixty-five years and
 - ii. The applicant or both for the applicants in a joint application is more than twenty-one years older than the child
 3. The restriction in such subsection (2) shall not apply in any case where a sole applicant or one of the joint applicants is the mother, father, or relative of the child
9. In an adoption Application the key to the approach both to evaluating the needs of a child's welfare through out his or her life and to dispense him with parental consent is proportionality. The effect of the adoption would be justified only where nothing else will do or made in the context of an adaption being imposed upon a family against the wishes of the child's parents and where the adoption will totally remove the child from any future contact with his or her natural parents or relatives. The co-active parents in this matter who are the Applicants have been having continuous contact with the minor since he was placed in their custody by the adoption agency. The test for dispensing with parental consent is justified in view of the circumstances for the minor to be adopted by the Applicants.
10. Having thoroughly reviewed the documentation submitted, including both the County Children Officer's report and the comprehensive assessment from the Change Trust Society, I find compelling evidence supporting the issuance of the Adoption Orders, with the unanimous professional consensus confirming that granting these orders would serve the minor's best interests. The Applicants have demonstrated full compliance with all qualifying criteria outlined in Section 158 of the *Children Act*, and their clear understanding of the profound implications and permanent nature of adoption is evident. Based on this careful consideration of all pertinent factors and the strong recommendations presented in the professional reports, I hereby conclude that granting the Adoption Orders is not only appropriate but essential for securing the minor's welfare and future well-being.
11. Based on a thorough examination of all evidence and documentation presented, I am fully satisfied that the Applicants demonstrate the requisite qualities to serve as suitable adoptive parents, possessing both the capability and commitment to provide an appropriate home environment and parental care for the minor. Accordingly, I hereby grant the prayers sought in the Originating Summons, with orders as follows:



- a. That the Applicants be and are hereby authorized to adopt CM alias RK the child shall be known as RK henceforth.
- b. That RK be and is hereby presumed to be a Kenyan citizen having been found in Kenya at the time of his birth.
- c. That the Registrar-General do make appropriate entries in the adopted children's register in respect of the minor, RK.
- d. That the Registrar of Births and Deaths be and is hereby directed to issue the child with a certificate of birth in the name, RK.
- e. That by dint of this adoption order the Directorate of Immigration Services in Kenya is under duty to issue the passport to the minor in compliance with the law without any reservation.
- f. That IAR and PN be and are hereby appointed Legal Guardians to the minor herein.
- g. That the Guardian ad Litem is discharged.

12. Orders accordingly.

DATED AND DELIVERED AT ELDORET THIS 20TH DAY OF JANUARY 2025.

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R. NYAKUNDI

JUDGE

