



REPUBLIC OF KENYA



KENYA LAW
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**In re HW (Minor) (Adoption Cause E002 of 2023)
[2025] KEHC 844 (KLR) (15 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 844 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
ADOPTION CAUSE E002 OF 2023**

GL NZIOKA, J

JANUARY 15, 2025

IN THE MATTER OF AN APPLICATION FOR ADOPTION FOR (MINOR) HW

IN THE MATTER OF

JMN APPLICANT

JUDGMENT

1. The subject of this judgment is an-parte originating summons dated 12th October 2023 and amended on 17th April 2024, brought under the provisions of section 162 of the *Children Act* No. 8 of 2001, (repealed) and Rule 4 of the *Adoption Rules*.
2. It is supported by an affidavit dated, 12th October 2023, sworn by the applicant JMN and a statement of the even date.
3. The applicant is seeking for the following orders:
 - a. Spent.
 - b. That the applicant JMN be authorized to adopt HW (minor) and subsequently the minor be issued with a birth certificate.
 - c. That the costs of this application be in the cause.
 - d. Any other order the court will deem fit and just.
4. The applicant avers that, she is a Kenyan citizen who resides in Mai Mahiu, Naivasha sub-County within Nakuru County. That she was born in the year 1963 and has never been married and neither does she have any biological child of her own. Furthermore, she is a Christian and runs a business at Mai Mahiu.



5. That the subject child, is also a Kenyan and was domiciled at New Life Home Trust but has been living with the child since the child was nine (9) months old as evidenced by the Foster Care Agreement dated 6th August 2021 executed by herself and New Life Home Trust.
6. The applicant further avers that the provisions of section 183 of the Children Act No. 29 of 2022 (herein “the Act”) empowers the High court upon hearing an application seeking for adoption orders to make an adoption order authorizing the applicant to adopt a child.
7. Furthermore, section 184 of the Act indicates the prerequisites for adoption including inter alia requirement that the child has been declared free for adoption by a registered adoption society.
8. That following the directions of the court on 12th July 2024 requiring the applicant to provide documentation indicating that the child is free for adoption, the applicant filed the following documents: -
 - a. A Committal to Charitable Institution *vide* Child and Protection Cause No. 19 of 2020 issued on 8th November 2020 at the Kandara Children’s Court committing the minor to New Life Children Home until further orders.
 - b. A letter from Muranga Level 5 Hospital dated 25th November 2020 to the effect that the baby was taken to the hospital by well-wishers on 8th November 2020 for accommodation after she was founded abandoned in a pit latrine and reported at Kandara Police Station booked vide OB No. 13/8/11/2020 and was seeking placement in a children’s home.
 - c. A letter dated 6th December 2020 from Kandara sub-County Children’s Officer to the Kandara Children’s Magistrate’s seeking that the minor be committed to New Life Home.
 - d. Letter from the aforesaid Children Officer dated 8th December 2020 addressed to the Social Work Department, Muranga County Hospital informing them of placement of the child at New Life Children’s Home – Nyeri by Kandara Children’s Court.
 - e. Two letters both dated 29th June 2021 from Kandara Police Station and the sub-County Children Officer addressed to the Administrator New Life Home Trust stating that the parents of the minor could not be traced nor has anyone claimed the minor and asking them to take the legal necessary measure in the best interest of the child.
 - f. The certificate of declaring a child free for adoption was issued by Change Trust.
 - g. A social Inquiry and Home Study Report by Change Trust dated 7th May 2021 which indicates that the applicant was interviewed on two occasions and a home visit conducted on 26th March 2021 and it was recommended that the applicant be allowed to adopt a child of her choice and a child be placed in her custody.
9. The applicant avers that the afore documents generally prove that the minor was properly available for adoption and no one has claimed her.
10. The amended originating summons is considered in the light of the provisions section 186 of the Act as follows:
 - (1) The Court may make an adoption order on application by—
 - (a) a sole applicant; or
 - (b) two spouses jointly.



- (2) The Court shall not make an adoption order in any case unless—
 - (a) the applicant has attained the age of twenty-five years, but is not above the age of sixty-five years; and
 - (b) the applicant, or both of the applicants in a joint application, is more than twenty-one years older than the child.
- (3) The restrictions in 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.
- (4) The Court shall not make an adoption order in favour of a sole male applicant, unless the applicant is a blood relative of the child.
- (5) The Court shall not make an adoption order in favour of the following persons unless the Court is satisfied on reasons to be stated on the record that there are special circumstances that warrant the making of the adoption order an applicant or joint applicants who has, or both have, attained the age of sixty-five years.
- (6) The Court shall not make an adoption order in favour of an applicant or joint applicants if the applicant or joint applicants, or any of them—
 - (a) is of unsound mind within the meaning of the *Mental Health Act* (Cap. 248);
 - (b) is incapable of exercising proper care and guardianship of a child;
 - (c) has been convicted by a Court of competent jurisdiction for any of the offences specified in the Third Schedule or similar offences;
 - (d) in the case of joint applicants, if the applicants are not married to each other;
 - (e) is a sole male applicant except where the applicant is a biological relative of the child; or
 - (f) is a foreign applicant except where the applicant is a biological relative of the child.
- (7) Notwithstanding anything contained in this section the Court may at its sole discretion decline to make an adoption order in favour of any person or persons if the Court is of the view that it is not in the best interest of the child to make the order.
- (8) Subject to the provisions of this section, an application for an adoption order in respect of a child shall be accompanied by written consents of the following persons—
 - (a) a parent or guardian of the child, or any person who is liable by virtue of any order or agreement to contribute to the maintenance of the child;
 - (b) on the application of one of the spouses, the consent of the other spouse; and
 - (c) in the case of a child who has attained the age of ten years, the child himself or herself.
- (9) If the child referred to in subsection (8)(c) has a disability which restricts or impairs the child's ability to independently give his or her consent, the child shall be accorded such assistance, including the assistance of an intermediary, to facilitate his or her written consent.

11. In compliance with the afore provisions, the applicant has availed her national identification card No. 74-----43 which indicates that she was born in 1963 and consequently she over the minimum age of 25 years old.



12. In addition, a report dated 20th August 2024, from the sub- County Children’s Office at Naivasha sub- County has been filed and reveals that the applicant’s parents are both deceased. That she is the 3rd born in the family of eight (8) children though two are deceased. Further she has a good relationship with her siblings and they have assured her of their support in the adoption process.
13. That the applicant completed her primary education but did not proceed to secondary school but has completed a course in tailoring and dressmaking. Further, she runs a business and has two plots in Mai Mahiu town each measuring 50x100 feet with title deeds in her name. That she has developed rental units on both properties with one plot having fourteen (14) units most of which are occupied and the second plot having eight (8) units, three (3) of which are occupied. Furthermore, she has a shop and posho mill in one of the plots generating Kshs. 5,000 as monthly profits. That she is able to raise Kshs. 30,000 monthly, from the shop and rental units.
14. The report further indicates that the applicant was at one time married however due to difficulty in getting children her marriage ended. As a consequence, she vowed not to get married again and opted to adopt two children, a male and female, though so far only the subject herein has been approved.
15. That the applicant is a follower of Catholic faith and fellowships at St. Peter’s Catholic Church at Mai Mahiu. That she is social and enjoys watching TV, travelling, meeting with friends and family. Furthermore, she does not abuse drugs and alcohol and neither does she have a criminal record.
16. The report indicates that the minor was found on 8th November 2020 abandoned in a pit latrine in Gataiyu village Kandara Sub-County within Muranga County and was rescued by a good Samaritan. That the matter was reported at Kandara Police Station and efforts to trace the child’s parents were futile. That the OCS of Kandara Police Station indicated in his final report dated 29th June 2021 that the child has never been claimed.
17. As a result, the child was taken to Change Trust Adoption Service whose committee discussed the child’s case on 1st August 2024 and declared her free for adoption vide certificate No. 00693.
18. The report further states that a visit to applicant’s home on 6th July 2024 noted that the applicant’s house is a permanent structure that is securely made and connected to electricity and water. That it has a kitchen, a bedroom, a spacious sitting room and one room serves as the shop. Further, the house has enough space with the house well-furnished for the child to play with the available electronic gadgets.
19. That the compound is spacious, surrounded with a concrete perimeter wall with entry of visitors closely monitored and regulated and that there have never been security concerns in the past.
20. Furthermore, the subject child was observed to be in good health, happy and well kept. That she interacts well with the applicant and calls her “mum” and communicates with her both in Kiswahili and Kikuyu. Further she spoke of visiting her cousins in Kiambu an indication that the extended family is aware of her and have embraced her.
21. That the sub County Children Officer John Kariuki Chege holds the view that adoption herein will be in the best interest of the child in line with the Care Reform Strategy that puts weight on alternative family care rather than a life in an institution and recommended that the court issue final adoption orders for the minor HM who is proposed to be named AW
22. Pursuant to the afore, and having considered the following documents: -
 - a. The affidavit in support of the summons sworn by the applicant;



- b. Foster care agreement dated 6th August 2021 issued by New Life Home Trust Nakuru wherein the institution released the subject child to the applicant sending legal adoption process.
 - c. A report from the Children's Officer at Naivasha.
23. I find that the applicant has generally satisfied the requirements of section 186 of the *Children Act* and I allow the amended originating summons dated 17th April 2024 in terms of prayers (2) and (3)
24. It is so ordered

DATED, DELIVERED AND SIGNED ON THIS 15TH DAY OF JANUARY 2025

GRACE L. NZIOKA

JUDGE

In the presence of

N/A for the applicant

Mr. Komen: court assistant

NB: Ruling to be brought to the knowledge of the parties/applicant's counsel

