



REPUBLIC OF KENYA



**In re AA (Minor) (Adoption Cause 008 of 2023)
[2025] KEHC 1962 (KLR) (20 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1962 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
ADOPTION CAUSE 008 OF 2023
E OMINDE, J
FEBRUARY 20, 2025
IN THE MATTER OF AN APPLICATION FOR ADOPTION
BY SKY AND JK FOR THE ADOPTION OF MINOR AA**

RULING

1. The Applicants approached this court vide an Originating Summons dated 5th September 2023 seeking the following orders;
 - a. Spent
 - b. That the Applicants SYK and JK be authorised to adopt 'AA' the minor.
 - c. That the Registrar general shall make an entry of adoption order herein in the adopted children's register in the prescribed form.
 - d. That the Registrar of births be pleased to issue SYK and JK with new birth certificates of the minors, delete the biological mother 'AW' name on the certificate and insert the applicants' names as the biological parents of the minor and the minor be referred to as 'DK'.
 - e. That the court do issue further orders as it may deem fit to be in the interest of the children.
2. The application is premised on the grounds on the face of it and the averments in the supporting affidavit.
3. The application is premised on the grounds that the minor was given up for adoption by her biological mother 'AW' on 20th April 2020 through KKPI Adoption society and thereafter the child found placement through Angel Centre for Abandoned children. He was committed to the center for abandoned children on 2nd November 2022 through a committal order issued on 2nd November 2022 by the Resident magistrate in Nairobi C&P [E540 of 2022](#).
4. Since no claim was made for the minor, the applicant expressed interest and formally started the adoption procedure. The committee at Change Trust sat on 11th November 2022 and after through scrutiny of paperwork and circumstances therein, the minor was declared free for adoption. The



children officers saw it fit and in the best interest of the child to place the minor under foster care of the applicants who are willing to nurture, educate and provide a conducive environment on 7th January 2023.

5. In support of the application, the proposed guardian ad litem swore an affidavit in support of the application. He deponed that he would investigate whether the applicants' statements were true and undertook to speak to and counsel the applicants, explaining to them that the adoption order is one that is irrevocable and would make them responsible for the upbringing of the minor. He also undertook to talk to the biological parents of the minor and confirm their affirmation of giving up the minor.

Hearing of the Application

6. The 1st application gave sworn testimony in court confirming his name and identification details. He stated that the 2nd applicant is his wife and that they have been married since 2010. He stated that he is a church elder at AIC Central Lake Region at Awasi. He urged that he has no other children and that they have lived with the child since 2023. Further, that they are very ready to accept the child and provide the care that he will need.
7. The 2nd applicant gave sworn testimony in court. She stated that her and the 1st applicant got married in 2010 and that she works at the Ministry of Health as a Public Health Officer at Kamagut. She is 52 years old and has not been married before. She has no children and that they decided to adopt the minor and nurture him as their own. They have lived with him since he was declared free to adopt. She is willing to give the child all the love and care he needs.
8. The Guardian Ad Litem JKK also testified in support of the adoption. He stated that he filed a statement that he would want adopted as he stood by the contents of the statement.
9. The Assistant director, Children's officer, Ainabkoi Sub County, Ms. Carolyn Kosgei, testified that she filed the report dated March 2024 on 2nd October 2024. Her recommendations were that the applicants have bonded well with the child and they may be approved to adopt the child. She stated that she visited their home and was satisfied that it was conducive for the upbringing of a child. The adoption home also declared the child free for adoption and she prayed that the court finds in favour of the applicants and allow that they adopt the child.
10. The Legal Guardian, MK, gave sworn testimony. He stated that he knows the applicants and that the 1st applicant is his brother in law. Further, that he filed the legal guardian's report dated 9th October 2023 and he stands by what is in the report. He stated that the duty of the legal guardian is to have the best interests of the child at heart in all aspects. He urged that he is aware that in case anything happens he will take up potential responsibility of the child and confirmed his readiness to do so.

Analysis & Determination

11. Section 183 of the *Children's Act* provides as follows;

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- (1) Subject to this Act, the High Court may, on an application made in the prescribed form, make an order, in this Act referred to as "adoption order", authorising an applicant to adopt a child.

12. The pre requisites for adoption are set out at section 184 of the Children's Act as follows;

1. A person shall not commence any arrangements for the adoption of a child unless—



- a. the Council, in accordance with the rules, has declared the child free for adoption; and
 - b. the child has attained the age of six weeks.
2. A person, including a parent, guardian or adoption society, shall not, prior to the making of an adoption order, entrust a child to the care, possession or control of any person not qualified to adopt a child in accordance with this Act.
 3. An applicant shall not preselect a prospective adoptive child except—
 - a. in the case of kinship adoption;
 - b. Where the applicant is a foster parent seeking to adopt a fostered child under the applicant’s care.
 4. The Secretary shall monitor and submit reports to the courts on the wellbeing of a child who is subject to adoption proceedings.
 5. Any person who contravenes subsections (1) or (2) of this section commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine not exceeding one million shillings, or to both.
13. Section 185 of the act states as follows on children who may be adopted;
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- (1) Any child who is resident within Kenya may be adopted whether or not the child is a Kenyan citizen, or was born in Kenya.
 - (2) Without prejudice to the generality of subsection (1), no Court may entertain an application for an adoption order in respect of a child unless—
 - a. the child concerned has been in the continuous care and control of the applicant within Kenya for a period of three consecutive months preceding the filing of the application; and
 - b. the application for an adoption order is supported by a report made by a duly registered adoption society recommending that an adoption order be made.
 - (3) The report referred to in subsection (2)(b) shall contain the society’s findings and recommendations in respect of the child and the applicant or applicants, as the case may be.
 - (5) The following children shall be eligible for adoption—
 - (a) a child who is an orphan and has no guardian or caregiver able and willing to take care of the child;
 - (b) a child who has been abandoned or whose parents’ or guardian’s whereabouts cannot be traced within a period of one year;
 - (c) children who are willingly offered for adoption by their biological parents in accordance with regulations made under this Part.
14. Section 186 gives the relevant provisions as to who may apply to adopt a child. It provides;
- (1) The Court may make an adoption order on application by—



- (a) a sole applicant; or
 - (c) 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.
6. 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.
7. 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.
8. 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 interests of the child to make the order.
9. 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.
15. Section 201 of the *Children's Act* provides;
- 1. Every adoption order made by the Court shall contain a direction to the Registrar to make an entry in the Adopted Children Register in the prescribed form.
 - (2) ...



- (3) ...
 - (4) ...
 - (5) Where an adoption order is made by the Court, the Court shall direct that the order be lodged with the Registrar, and on receipt of the order, the Registrar shall comply with the directions contained in the order with regard to—
 - (a) marking an entry in the Register of Births with the word "Adopted"; and
 - (b) making the appropriate entry in the Adopted Children Register.
16. I have considered the Application. I am satisfied that the same has met the requirements of The Children's Act as herein above set out. I therefore allow the Application in its entirety as hereunder;
- a. That the Applicants SYK and JK be and are now hereby authorised to adopt 'AA' the minor.
 - b. That the Registrar General be and is now hereby directed to make an entry of adoption order herein in the adopted children's register in the prescribed form.
 - c. That the Registrar of births be and is now hereby directed to issue SYK and JK with new birth certificates of the minors, delete the name of the biological mother 'AW' on the certificate and insert the applicants' names as the biological parents of the minor and the minor shall now henceforth be referred to as 'DK'.
 - d. The costs of the Application shall be in the cause

READ DATED AND SIGNED AT ELDORET ON 20TH FEBRUARY 2025

E. OMINDE

JUDGE

