



JJW v EG (Adoption Cause 6 of 2019) [2024] KEHC 40 (KLR) (12 January 2024) (Ruling)

Neutral citation: [2024] KEHC 40 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
ADOPTION CAUSE 6 OF 2019
RN NYAKUNDI, J
JANUARY 12, 2024**

BETWEEN

JJW GUARDIAN

AND

EG MINOR

RULING

1. JJ K herein after the Applicant herein a National of the Republic of Kenya moved this court vide an originating summons dated 9.3.2020 seeking the following substantive orders:
 1. That the Applicant JJ K be authorized to adopt the minor herein EG and the child shall be called EK.
 2. That the Registrar General shall make an entry of the adoption order herein in the adopted Children Register in the prescribed form
 3. That the minor to be considered as a Kenyan Citizen
2. The application is presented under the *Children Act* as amended but the court will also be at liberty to cite any other enabling legal instruments or case law principles. The application is supported by an affidavit of the applicant and that of the guardian ad litem. Briefly the grounds advanced by the applicant states as follows:
 1. That the undersigned wish to adopt baby EG
 2. My full name is JJ K (Se the attached copy of my National Identity card Marked annexure JJK01)
 3. I reside in Eldoret within Uasin Gishu County where I own a home
 4. I am a Kenya citizen and of African race and of Christian Faith



5. That the minor herein is a child in need of care and protection after he was abandoned
 6. That I have been fostering the minor since 16.3.2018 (See copy of care and placement Agreement marked Annexure JKK-2)
 7. That I reside in Kenya indefinitely
 8. That I do not have any child
 9. That the minor is of Kenya Nationality and of African Race who shall be brought up in Christian faith.
 10. I have lived with the minor for more than 1 year and 3 months
 11. The minor herein is in need of care and provision since he is in our care and I am desirous of assuming full parental responsibility
 12. Unless we are granted the orders, the minor stands to suffer irreparably since he requires to be included in NHIF and other relevant documents to enable him fully derive the benefits as a dependant of the applicant herein
 13. That I have not received or agreed to receive and no person has made, given or agreed to make or give me any payment or reward in consideration of the adoption
 14. That I have made my previous application for an adoption order in respect to the same minor.
 15. No. Application had been made relating to the adoption of the minor.
 16. I confirm that I have obtained all necessary consents from Kenya children Homes Adoption Society where through their committee sitting they are issued freeing certificates for the minor for adoption by myself annexed hereto marked JKK-3 are copies of the documents consenting and clearing the minor.
3. It is crystal clear from the probative evidence the parents of the child are unable to take care of his maintenance and their whereabouts are unknown and this necessitated him to be taken in by the adoption agency. The child has been under the foster care and custody of the Applicant since 16.3.2018 and they have since then bonded and the Applicant has been able to meet his material, physical, emotional, religious, educational, shelter, medical, and other survival rights. The Kenya children's home Adoption Agency in their detailed report dated 2.12.2019 has strongly recommended the Applicant as a suitable adoptive parent of the minor and an adoption order being issued by this court would be in the child's best interest. In addition on 26.11.2016 another report was prepared pursuant to Section 156 (1) of the *Children's Act* declaring the minor free for Adoption. Following that report the Children's Court Molo made an order committing the minor for care and protection by the African Gospel Church. The initial Children's home had placed the initial care of the child in the custody of the Applicant.

Determination

The law

4. The standing point in this application is to place reliance in Art. 53 of the *Constitution* which provides as follows:
 1. Evert child has the right:



- a. To a name and nationality from birth
 - b. To free and compulsory basic education
 - c. To basic, nutrition, shelter and health care
 - d. To be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour
 - e. To parental care and protection, which includes equal responsibility of the mother and father to provide for the child, whether they are married to each other or not
5. What is the Anchor in the *Children's Act* on Matters of Adoption?. Section 8 (2) provides that. All judicial and administrative institution and all persons acting in the name of such institutions, when exercising any power 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 guidance and correction as is necessary for the welfare of the child and in the public interest.
6. Section 184 provides for the pre-requisite for adoption whereas Section 185 outlines the criteria the children who may be adopted in which the child concerned must be in continuous care of the Applicant within Kenya for a period of three consecutive months preceding the filing of the application and further the application for an adoption order is to be supported by report made by a duly registered adoption society recommending that adoption be made. In sub section 4 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.
7. It should be noted that Section 187 of the *Act* provides for the criteria in which consent required under Section 186(8) can be dispensed by the court that is
- a. In the case of the parent or guardian of the child the parent or guardian has abandoned, neglected, persistently failed to maintain or persistently ill-treated the child.
 - b. In the case of a person liable by virtue of an order or agreement to contribute to the maintenance of the child, that person has persistently neglected or refused to make contribution in accordance with the order or
 - c. In any other case, except in respect of the consents required under Section 186(8) c) and be found or is incapable of giving his or her consent, or that his or her consent has been unreasonably withheld.



8. What constitutes the Welfare and best interest of the child was delved into in the case of *JVC* (1970) AC 668 “ That when all relevant fact relationship claims and wishes of parents, risks choices and other circumstances are taken into account and weighed, the course to be followed will be that which is most in the interest of the child. The court’s reasoning here is a good example of contextual interpretation of the Welfare and the best interest of the child. According to Justice Chigamoy OF Uganda High Court in *David Twesigye (Minor)* in HCMA No. 0004 OF 2008 he held that “ While the primary right of a child is to grow up under the tulegenage of his or her parents, or parents for the obvious reasons of emotional attachment, if it is shown to the satisfaction of a competent authority, and in this case the court that vesting legal guardianship of the child in the applicants, it would serve the nest interest of the child, then it would be proper for this court to make an order removing such child from the parent.
9. That the brief background information from the testimony of the applicant, the detailed report from the Kenya Children’s Homes Adoption Society, the court order issued by the children’s court at Molo and the guidelines issued by the Director of children’s Department on adoption of minors this court makes the following conclusions:
 - a. The applicant has fulfilled the legal requirements set as acriteria to be granted an adoption order by this court
 - b. That the evidence canvassed before this court demonstrate that the unknown biological parents and relatives of the minor are unable and unwilling to shoulder any responsibilities within the rubric of rights enshrined in the Children’s Act.
 - c. That in view of the special circumstances of this case, the consent so required by the Act is hereby dispensed with.
 - d. That the record is clear that the minor has been under the foster care of the Applicants on 16.3.2018.
 - e. That in the court’s view it is in the best interest of the minor to be adopted by the applicant
10. Given the overall evaluation of the material placed before this court the originating summons filed in court on 26.7.2019 succeeds with the following orders to abide:
 1. That the Applicant be authorized to adopt the minor herein E.G. as an adoptive parent.
 2. That the minor be considered as a Kenyan citizen by birth to be issued with all the legal instruments i.e passport, and birth certificate as the case may be.
 3. That all rights that accrue in the constitution and other legal instrument primarily for the best interest of the child be domiciled and sufficiently so guaranteed by the Applicant.
 4. That Costs of this application be in the cause.

DATED SIGNED AND DELIVERED VIA E-MAIL AT ELDORET ON THIS 12TH JANUARY 2024

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R. NYAKUNDI
JUDGE

