



**In re MK (Formerly OMN) (Adoption Cause 3 of 2022)
[2024] KEHC 2518 (KLR) (12 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2518 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
ADOPTION CAUSE 3 OF 2022**

JK SERGON, J

MARCH 12, 2024

IN THE MATTER OF THE CHILDREN ACT (NO. 8 OF 2001)

AND

THE CHILDREN (ADOPTION) REGULATIONS OF 2005

AND

IN THE MATTER OF THE HIGH COURT OF KENYA ADOPTION CASE NO.5 OF 2016

AND

**IN THE MATTER OF APPLICATION FOR REVOCATION
OF ADOPTION OF M.K (FORMERLY O.M.N)**

IN THE MATTER OF

HCK EXPARTE APPLICANT

RULING

1. The notice of motion coming up for determination is dated 7th September, 2022 seeking the following orders;
 - i. Spent
 - ii. That the adoption order dated 9th March, 2018 issued to the Applicant and which M.K (the Child) on the Applicant herein be revoked forthwith.
 - iii. That the Honourable Court be pleased to make an order returning the Adoptee back to the Arise and Shine Children's Home in Molo Town.
 - iv. That the cost of this application be on the cause.
2. The application is supported by grounds on the face of it an affidavit sworn by the Applicant herein.



3. The Applicant avers that she adopted the child herein on 6th October, 2017 vide Adoption Cause No. 5 of 2016 and attached the adoption order dated 9th March, 2018.
4. The Applicant avers that the instant application is premised on exceptional circumstances, the applicant is sick after having been diagnosed with a serious heart condition that necessitated implanting of a heart pacemaker and high blood pressure.
5. The Applicant avers that the adoptee was adopted while aged four (4) years and is currently aged thirteen (13) years and has exhibited uncouth behaviour and further that she has enrolled the child to five schools to date and in his current school she has been summoned to attend various disciplinary cases at [particulars Withheld] Primary School.
6. The Applicant avers that she has sought the services of pastors, counsellors, the area chief and her relatives to talk and counsel the adoptee but this has resulted in no change of habits and behaviour of the adoptee.
7. The Applicant avers that she has had discussions with the appointed legal guardians of the child and they have indicated their unwillingness to take up responsibility over the child should anything happen to her on account of the uncouth behaviour depicted by the adoptee.
8. The Applicant therefore urged the court to consider the exceptional circumstances and revoke the adoption order herein and return the child to Arise and Shine Children's Home in Molo for re-adoption by other parents with capacity to take care of him.
9. Henry Nyabuto Bigoro, the Sub-County Children's Officer stationed at Molo Sub County, filed an affidavit stating that he was in receipt of an order requiring him to file a report on the Adoption Cause No. E003/2022 and a further order from Kericho Children's Court No. E044/2022 requiring the office to place M.K under care and protection in a children's home within Molo pending hearing and determination of the High Court Adoption Cause No. E003 of 2022.
10. The Children's Officer stated that the subject was subsequently brought to Molo Children's Office with a court order dated 21st December, 2022 requiring that the child be returned to Arise and Shine Children's Home in Molo Town and that the said children's home was closed down several years ago and that the child was taken to an alternative home within Molo.
11. The Children's Officer stated that the child has threatened to run away from Molo Children's Home where he was placed and had exhibited difficult behaviour and further that the said minor is not willing to continue staying in Molo and has threatened to escape severally, he therefore urged this court to consider that best interest of the child and order that the minor be returned to Kericho and be committed to a children's home within Kericho County given the Arise and Shine Children's Home does not exist anymore in Molo. This Court has noted the sentiments of the children's officer. However, the proposal to have the adoptee returned to Kericho to be committed to a children's home within Kericho does not require the adoption order to be revoked first. There are remedies prescribed by the law which may address the complaints raised by the applicant against the adoptee without the adoption order being set aside.
12. The Children's Officer highlighted that the child is a candidate and therefore ought to register for the exams at his former school [particulars Withheld] Primary School.
13. The Applicant filed submissions in support of the application for revocation of adoption order dated 9th March, 2018, which I have considered.



14. The Applicant submitted that she was aware of the legal implication of Section 171 of the *Children's Act* No. 8 of 2001 which provides that upon the adoption order being made she assumed full parental care of the child herein. The applicant conceded that subject to the adoption order dated 9th March, 2018, she assumed all the rights, duties, obligations and liabilities of the child herein, however, the exceptional circumstances herein had vitiated against the success of the adoption process.
15. The Applicant maintained that her health condition had deteriorated significantly and she was surviving on a pacemaker and further that the minor's uncouth behaviour was aggravating her health condition and that these constituted exceptional circumstances warranting this court's intervention.
16. The Applicant therefore urged the court to consider the exceptional circumstances herein and order that the adoption order dated 9th March, 2018 be set aside and reversed.
17. I have considered the pleadings and submissions by the parties and the sole issue for determination by this court is whether to revoke the adoption order dated 9th March, 2018.
18. In deciding upon any matter involving a child, courts are obliged to give priority to the best interests of the said child, section 8 (1) of the *Children Act* No. 29 of 2022 provides as follows;

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies—

(a) the best interests of the child shall be the primary consideration; ”
19. The *Children Act* No. 29 of 2022 provides for review of adoption orders in section 190 and variation of adoption orders, the purpose of a variation being to correct a defect in the particulars contained therein and in instances whereby an adoption order is quashed or an appeal against an adoption order is allowed, in section 199 of the said Act. There is otherwise no provision for the reversal or revocation of an adoption order.
20. In the instant application, the applicant has urged this court to revoke the adoption order on the basis that there exists exceptional circumstances. There is no doubt that under the *Children Act*, 2001 and the *Children (Adoption) Regulations*, that there is no provision for revocation or the setting aside of an adoption order once given. It would appear that the law envisaged for the adoption order to be interfered with, only on Appeal. Section 167 of the *Children Act*, (Revised Edition) 2012 [2010] provides as follows:

“Any person aggrieved by the making or refusal to make of an adoption order or order pertaining to parental responsibility for a child may appeal therefrom in the same manner as if the application were a suit instituted under the Civil Procedure Act (Cap.21 L.O.K).”
21. The effect of an adoption order under the *children Act* is that all rights, duties, obligations and liabilities of the biological parents as concerns the child are extinguished and are transferred and placed in the hands of the adoptive parent(s) who shall deal with the child as if it was born to them (him or her).
22. It would also appear that in England and Wales, an adoption order is normally irreversible once the time to appeal has lapsed. However, the Court in very rare occasions may step in and set aside an adoption order where there is a procedural irregularity or fraud or mistake or where the order was made in breach of natural justice. *In Re B* (adoption: Jurisdiction to set aside) [1995] FAM 239 C.A. The Court of appeal made it clear that there is no general inherent power to set aside an adoption order and in the absence of the procedural irregularities or mistakes, no power exists to revoke the order.



23. In Motion dated 7/9/2022, the applicant avers that there are exceptional circumstances. She stated that she is sick after having been diagnosed with a serious heart condition that necessitated the implanting of a heart pacemaker and high blood pressure. It is also stated that the adoptee who is now aged 13 years has exhibited uncouth behavior. She also pointed out that the adoptee has been enrolled in five different schools in a short span of time where she has been summoned to attend to various disciplinary cases. The question which must be answered here is whether the aforesaid circumstances or narratives can be regarded as exceptional circumstances? In my humble view, I am not convinced that the aforesaid narratives should be categorized as exceptional.
24. It is clear that the behavior exhibited by the adoptee is equivalent to those exhibited by teenagers who are undergoing stages in life which needs guidance. As the adoptee grows up, he will get through that stage of life. It is a period where a young child like the adoptee begins to discover himself. The fact that the applicant suffers from high blood pressure or from a heart condition in itself does not amount to exceptional circumstances.
25. In the end, I find the motion dated 7th September, 2022 to be without merit. The same is ordered dismissed with no order as to costs.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 12TH DAY OF MARCH, 2024.

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J.K. SERGON

JUDGE

In the presence of:

C/A – Rutoh

Miss Amaya holding brief for Korir for the Applicant

