



**In re KKK (A Minor) (Adoption Cause E015 of 2023)
[2024] KEHC 5581 (KLR) (12 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 5581 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
ADOPTION CAUSE E015 OF 2023
G MUTAI, J
APRIL 12, 2024
IN THE MATTER OF KELVIN KAHINDI KAZUNGU (A MINOR)
AND
IN THE MATTER OF AN APPLICATION FOR KINSHIP ADOPTION**

**IN THE MATTER OF
KBC APPLICANT**

JUDGMENT

1. The Applicant is a dual citizen of Kenya and the United States of America. At the time she filed the Originating Summons, she held a Certificate of Registration as a Kenyan citizen, serial Number CR XXXX. Ms KBC (hereafter “Kate”) was previously married to KKI (deceased). Mr. Iha passed away on 10th October 2013, following a tragic road accident.
2. The minor, KKK (hereafter “Kelvin” or “Minor”), is the son of Mr Iha and his former wife, MN. Kate averred in the Originating Summons that following the separation of Mr I and Ms N, Mr I retained custody of K. Upon Mr I’s demise, K agreed with Ms N and her extended family that K would continue raising K and have his physical custody, as Ms N is unemployed and not financially able to provide for him.

The Pleadings

3. Vide an Originating Summons dated 6th October 2023 K, through her advocate Barbara Ambaka & Associates, sought the following orders:-
 1. That the Applicant be authorized to adopt KKK, a minor who is to be known as KKK and the Registrar General be directed to enter this adoption into the Register of Adoptions;
 2. That DFC and NEC be appointed as the Legal Guardians of the Minor; and



3. That the child be indicated to have been born in Kenya.
4. In her affidavit in support of the Originating Summons, K averred that her marriage to Mr Iha was blessed with one issue: AKK, a daughter born on 5th December 2013. Following the untimely demise of Mr Iha, she sought legal guardianship of the minor, which orders were granted to her on 3rd April 2014. Since then, K has been in her legal custody.
5. K stated that she is in a relationship with one AJB. She indicated that Mr B has a strong bond with both Kelvin and Asha. She desires to adopt Kelvin so that the minor can have access to her benefits without restrictions and also so that he can secure his future benefits and inheritance. She is a Christian and intends to raise Kelvin in the said religion. She has no criminal record.
6. K averred that the adoption application enjoys the support of the family members, on her side, as well as on the side of her late husband. She is employed by the Kenya [particulars withheld] Trust in Kilifi as the Finance Manager and Consultant and is financially secure and has the means to take care of the child. She stated that the minor was freed for adoption on 6th September 2023.
7. The Originating Summons was supported by an affidavit in support, consent to act as legal guardian and various documents, including a certificate of Registration as a citizen of Kenya, the USA passport, marriage certificate, certificate of death, birth certificate of Asha, as well as other supporting documents whose provenance I have considered.
8. The minor Kelvin was born on 14th July 2007 at Takaungu in Kilifi County. Kelvin is presently 17 years old and is a student at [particulars withheld] Senior School, Turi, in Molo, Nakuru County. The Little Angels Network, an adoption society, assessed both the Applicant and the minor. On 6th September 2023 the Case Committee of the said institution deliberated on the matter. The said committee recommended the adoption, and noted in their report that “adoption would be in the child’s best interest”. Consequently, they issued a certificate to declare the child free for adoption, serial number XXXX, pursuant to section 184(1)(a) of the *Children Act, 2022*.

Appointment of the guardian-ad-litem

9. The Applicant filed together with the Originating Summons a Chamber Summons application dated 6th October 2023 vide which she sought, inter alia, to have FGM be appointed as a guardian-ad-litem in respect of these proceedings. The said application was heard on 2nd November 2023. Being satisfied with the qualifications of the proposed guardian-ad-litem, I appointed him as such and directed that he file the requisite report within 30 days of the date thereof. I also directed the Director of Children Services to prepare and file a social enquiry report within 30 days of 2nd November 2023.

Testimonies of the Witnesses

10. This matter was heard on 19th February and 21st February and 26th March 2024. A total of 6 witnesses testified.
11. The 1st witness was K. KBC is a holder of US passport No. XXXX. She testified that she lives in Kilifi. The minor is the son of her deceased husband and has been under her care since he died. It was her testimony that she understands that adoption is permanent and that she can’t change her mind once it is issued.
12. The 2nd witness was MN, also known as MNS. She is a holder of ID NO XXXX. She resides in Takaungu. M testified that she is the mother of the minor and was married to Mr. KI. She further testified that she had agreed with K that she (K) would educate Kelvin and thereafter return him to



Kenya; during his minority, Kate would live with K at Mnarani. As it wasn't clear whether M genuinely understood the effect of adoption, I directed that she be recalled for further hearing in the presence of a close relative. M gave further testimony on 26th March 2024, in which she confirmed that she knew what effect the adoption of K by Kate would have. during her testimony, her mother, KS, was present. Ms. S affirmed that the family had no objection to the proposed adoption.

13. The 3rd witness was DFC. Daniel is a holder of American Passport No XXXXXX. Daniel and his wife, NEC, are the proposed legal guardians. He resides in the State of Maine in the United States of American. He testified that he has a strong relationship with K. He further testified that he knew the role of a legal guardian and was prepared, together with his wife, to play the said role as he loves the minor.
14. The 4th witness was FGM. He is a Kenyan citizen holding Kenyan ID NO XXXX. Felistus is the court-appointed guardian-ad-litem. He assessed the Applicant and prepared and filed the requisite report. In his report, he recommended the adoption. He testified that the biological mother agreed to the adoption. Felistus also testified that Kate and K had bonded very well.
15. The 5th witness was Winfred Kambua Kaluku. Winfred works with the Directorate of Children Services, Kilifi. She testified that they carried out a social enquiry at the home of the biological mother of the child on 10th February 2024. Ms Kaluku noted that the biological mother of the child was not completely knowledgeable about the effect of adoption. She recommended the adoption be subject to the biological mother being made fully aware of the effect of adoption.
16. JMW was the 6th witness. J is a social worker with Little Angels Network. His organization declared the child as being free for adoption and approved the Applicant. He recommended the adoption. In his testimony Mr. Wambua testified that the biological mother knew what the adoption entails and consented to it freely.
17. The minor, KKK, was the 7th Witness. After conducting an oral examination, I was satisfied that he understood the effect of an oath. Kelvin is a year 11 student at St. [particulars withheld], Turi. He consented to the adoption.
18. The last witness was KS. Ms S is the grandmother of the minor (and the mother of Kelvin's mother, MN). She gave her blessings to the adoption.

Analysis and Determination

19. I have seen the pleadings, the supporting documents, the report of the Directorate of Children Services, and the guardian ad litem. I have also heard the testimonies of the witnesses who testified in Court. The issues that call for my determination are whether the minor is available for adoption, whether the Applicant is fit to adopt him, and, most importantly, whether the adoption is in the best interest of the child.
20. The Applicant is the minor's stepmother. The minor's father is deceased, and his mother has consented to the adoption.
21. Regarding the child's nationality, it is clear that he is of Kenyan nationality, as both his parents are Kenyan.
22. In terms of age, the minor is above six weeks and below 18 years, which provision falls within the age bracket of any adoptive child pursuant to Section 184 (b) of the [Children Act, 2022](#). Further, Section 185(1) states that any child who is a resident of Kenya, whether born in Kenya or not, is eligible for adoption. I have no doubt the child is fit for adoption.



23. Concerning the Applicant's suitability, she is an American citizen by birth and a naturalized Kenyan aged 43 years, which places her under the age bracket of not less than 25 years nor more than 65 years for an adoptive parent in compliance with Section 186(2) of the *Children Act*, 2022. The Applicant has been described as financially stable. She has no criminal record. Since the placement of the minor into her custody, the child has fully bonded with her. She understands the consequences of adoption and knows that once an adoption order is made, it is permanent.
24. Consequently, I have no doubt that she has met the necessary requirements to adopt Kelvin. I am guided by the case of *In re B (Baby)* [2018] eKLR, where the court stated:-
- “I am of the considered view that weighing all factors and the evidence placed before me, the applicants are of sufficient ability to bring up the child and to furnish her with appropriate support and maintenance within their resource base available to them.”
25. On the question of whether the adoption is in the best interests of the baby, I am guided by Article 53(2) of the *Constitution* of Kenya, 2010 and Section 8(1) and (2) of the *Children Act* 2022 which underscores the best interests of a child as the primary consideration before making any decision concerning a child.
26. Further, the court in the case of *In re MA (Baby)* [2021] eKLR stated:-
- “This court, in the case of *In re B (Baby)* [2018] eKLR, held that the purpose of Kenya's Constitution and Children's Act is to protect and promote the welfare of Children by providing them with stable family units. The fundamental concern, therefore, in every adoption cause is the best interest of that very child.”
27. K's father died in 2013. His biological mother is, in her own admission, indigent. The Applicant has done her best to educate K. Master K attends one of Kenya's most expensive private schools. He also needs basic necessities like food, shelter and clothing, which the Applicant has stepped in to provide. From the evidence adduced, he has fully integrated with Applicant. It is obviously in the child's best interests that this adoption application is allowed. I am guided by the case of *In re IK (Child)* [2020] eKLR, where the court stated:-
- “She needs parental care to grow up as a normal child with emotional and physical protection, which the applicants have stepped in to offer. In that regard, the applicants meet the legal requirements for adoption. Further, all reports recommended adoption for the benefit and well-being of the child. As the Constitution and the law state, in all matters concerning a child, the child's best interests are paramount.”
28. Based on the testimony that the biological mother gave upon being recalled, I am satisfied that she gave her consent willingly and that she now understands the effect of an adoption order. Given that Kelvin's grandmother attended Court, I am also certain that the proposed adoption enjoys the support of the biological mother's family.

Disposition

29. I, therefore, find and hold that the adoption application has merit. The same is in the best interest of KKK. Consequently, I issue the following orders:-
1. I declare KKK (minor) a Kenyan citizen by birth;
 2. I authorize the Applicant, Kate Benton Crowley, to adopt KKK (minor);



3. KKK (minor) shall retain his name, KKK;
 4. I appoint DFC and NEC as the legal guardians of KKK (minor) and entrust them with the responsibility of taking care of him in the event that the Applicant becomes deceased or is otherwise permanently unable to take care of him before he attains the age of majority;
 5. The Registrar General is hereby ordered to make an entry recording the adoption order made herein and the date of birth of Kelvin Kahindi Kazungu as being 14th July 2007 in the Adopted Children's Register; and
 6. The guardian-ad-litem FGM is hereby discharged.
30. Orders accordingly.

DATED AND SIGNED THIS 12TH DAY OF APRIL 2024 AT MOMBASA.

GREGORY MUTAI

JUDGE

In the presence of: -

Ms Barbara Ambaka, advocate for the Applicant; and

Arthur – Court Assistant.

