



**In re CM (Child) (Adoption Cause E003 of 2022)  
[2024] KEHC 4692 (KLR) (11 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 4692 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAJIADO  
ADOPTION CAUSE E003 OF 2022  
SN MUTUKU, J  
APRIL 11, 2024**

**IN THE MATTER OF**

**ANK ..... 1<sup>ST</sup> APPLICANT  
BWM ..... 2<sup>ND</sup> APPLICANT**

**JUDGMENT**

1. Through an amended Originating Summons dated 30<sup>th</sup> October 2023, ANK and BWM, the Applicants herein have approached this court seeking the following orders:
  - i. That Martin Ngogho Wainaina be appointed Guardian *Ad Litem* in this Cause.
  - ii. That ANK and BWM be granted custody of CM until the disposal of this application for adoption.
  - iii. That ANK and BWM be authorized to adopt CM.
  - iv. That the Registrar General be ordered to make the appropriate entries in the adopted children's register in respect of CM.
  - v. That costs be in the cause.
  
2. The Applicants relied on the grounds that the orders sought are in the best interest of CM. They have supported the application with grounds contained in their affidavit sworn on the 29<sup>th</sup> October 2023 to which they have annexed various documents in support of the application. I have read the affidavits and the annexed documents including a Report dated 30<sup>th</sup> August 2023 from the Kenya Children's Homes, the adoption society declaring the two applicants fit to adopt the minor. There is also the minor's birth certificate confirming his date of birth as 16<sup>th</sup> June 2017 and his mother as Edith Waithira Mwangi, deceased, as shown in Certificate of Death dated 23<sup>rd</sup> April 2020.



3. Other documents attached are Police Clearance Certificates of the two applicants showing that they do not have any criminal records and Certificate declaring the minor free for adoption from the Kenya Children's Home Adoption Society dated 16<sup>th</sup> August 2023.
4. On 31<sup>st</sup> October 2023, this court appointed Martin Ngotho Wainaina as Guardian *Ad Litem* of the minor and commissioned him to investigate the suitability of the applicants to adopt the minor and present a report to court within 45 days. The court further directed the Children Services to investigate the suitability of the applicants to adopt the minor and file a report to court within 45 days.
5. Both reports have been filed and I have taken time to read them. I find the reports favourable and contain similar findings of the social circumstances of the applicants save for few differences including date of birth of the 1<sup>st</sup> Applicant.
6. On 4<sup>th</sup> April 2024, the Application was argued by Ms. Gichuki, learned counsel for the applicants. Ms Gichuki told the court that the applicants are husband and wife; that the minor is an orphan after his single mother died on 10<sup>th</sup> June 2022; that the applicants took the minor under their care as their own child and that the minor has bonded well with the applicants and their two children.
7. This court noted that the Originating Summons does not include a prayer for appointment of the Legal Guardian. The Court directed counsel to file an affidavit by the applicants introducing a proposal to appoint a person of their choice as Legal Guardian and an affidavit of consents of the proposed person.
8. The Applicants have filed an affidavit sworn on 5<sup>th</sup> April 2024 proposing JWM as the Legal Guardian. The said JWM has also filed an affidavit of consent to be appointed as a legal guardian dated 5<sup>th</sup> April 2024.
9. I have considered this application. This is a kinship adoption. The 2<sup>nd</sup> applicant is an aunt to the minor. The record shows that the minor's mother Edith Waithira Mwangi was a sister to BWM, the second applicant.
10. This court is commanded under Article 53 (2) of [the Constitution](#) to safeguard the best interest of the child in all matters concerning the child. Further section 8 (1) and (2) of the [Children's Act](#) provides as follows:

8.

(1) 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;

(b) the best interests of the child shall include, but shall not be limited to the considerations set out in the First Schedule.

(2) All judicial and administrative institutions, and all persons acting in the name of such institutions, when exercising any powers 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 such guidance and correction as is necessary for the welfare of the child, and in the public interest.

11. The reports by the Guardian *Ad Litem* and the Children's Services are favourable and show that the minor has bonded well with his adoptive family. The child has been freed for adoption as shown in the Certificate dated 16<sup>th</sup> August 2023 from the Kenya Children's Home Adoption Society. The father of the minor is unknown. His consent is not therefore available and this court will forgo the said consent.
12. I am satisfied that it is in the best interest of the minor to allow this application. He will be placed in the good hands of his aunt and uncle who are found suitable to adopt him. With this adoptive family, the minor will be provided for, protected and his best interests taken into account. I will and do hereby grant an adoption order in favour of the applicants and make the following orders:
  - i. The Applicants, ANK and BWM, are hereby authorized to adopt the minor CM.
  - ii. The minor shall now adopt the name CMN.
  - iii. The Registrar General is directed by this court to make the appropriate entries in the Adopted Children's Register in respect of the minor, CMN.
  - iv. The Guardian *Ad Litem*, Martin Ngotho Wainaina is hereby discharged from his duties as guardian ad litem.
  - v. JWM, is hereby appointed Legal Guardian of the minor CMN.
  - vi. The applicants shall bear the costs of this application.
13. Orders shall issue accordingly.

Dated, signed and delivered this 11<sup>th</sup> April 2024.

**S. N. MUTUKU**

**JUDGE**

2

