



**In re FSK (Minor) (Adoption Cause E021 of 2023)
[2024] KEHC 4535 (KLR) (5 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 4535 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
ADOPTION CAUSE E021 OF 2023**

G MUTAI, J

APRIL 5, 2024

IN THE MATTER OF AN APPLICATION FOR ORDERS OF ADOPTION OF FSK BY LBAK

BETWEEN

LBAK APPLICANT

AND

THE LITTLE ANGELS NETWORK RESPONDENT

JUDGMENT

Introduction

1. The Applicant is LBAK. I will henceforth refer to her as “L”. L is the aunt of FSK, a child of female sex born on 15th December 2014 to F Kayoro Atuo (hereafter referred to as “F”). L and F were siblings. F is now deceased.
2. L wishes to adopt FSK, a child (hereafter referred to as “F”). Vide an Originating Summons dated 14th December 2023; she applied for the following orders: -
 1. Pursuant to Article 14(4) of *the Constitution* of Kenya and section 7 of the *Children Act, 2022*, this Honourable Court be pleased to declare the child, FSK, a Kenyan citizen by birth;
 2. Pursuant to the provision of section 187 of the *Children Act, 2022*, this Honourable Court be pleased to dispense with the requirements of the consent to the adoption as required by the provisions of Section 186 of the *Children Act, 2022*;
 3. The Applicant, LBAK, be authorized to adopt FSK, a child;
 4. Upon the making of the adoption order, the child be known as F FSK;
 5. Upon the making of the adoption order, SWK be appointed a Legal Guardian of the child as provided for by the provisions of section 195 of the *Children Act, 2022*;



6. Upon the making of the adoption order, the Registrar General do make an entry recording the adoption and the estimated date of birth of the child as 15th December 2014 in the Adopted Children Register as provided for by section 201 of the *Children Act*, 2022; and
7. The costs of this application be costs in the cause.
3. In the statement in support of the Application, L described herself as a Kenyan citizen of the African race born on 13th October 1974. She is an accountant employed by WEC Lines Kenya Ltd and resides at [Particulars Withheld], within Mombasa County. L is a single Muslim lady with no children of her own. She is law-abiding, has not been charged and or convicted of any crime, is in possession of a certificate of good conduct and is not a lesbian or a homosexual. F has been under her care and possession since 20th September 2016, when her sister, F, F's mother, died.
4. The biological father of the child is unknown. He never played a role in the life of the proposed adoptive child.
5. F attends [Particulars Withheld] Muslim School. If the adoption application is successful, L proposes to rename F, F FSK. L wishes that F does not lose her identity.
6. L attached to the application copies of the adopted child's birth certificate, her national identification card, police clearance certificate, F's death certificate, consent to give up a child for adoption signed by L's parents' HOK and SAK, the certificate of declaring the child free for adoption, Report to Declare a Child Free for Adoption, Preplacement Report, F's School Report as well as other documents which the Court has perused and considered carefully.

Court Proceedings

7. This matter came up for hearing on 15th February 2024. On the said date, Ms KRM, the proposed guardian-ad-litem, testified. K works with a shipping company in the Human Resources and Accounts Department. She is married with 5 children. Upon being convinced of her suitability, I appointed her as a guardian-ad-litem. I ordered her to prepare and file a statutory report within 30 days of the said date upon visiting the home of the Applicant and ascertaining her suitability.
8. On 20th March 2024, the main cause came up for hearing. 5 witnesses testified. I shall set out the summary of their respective evidence below.
9. The first Witness was Joshua Mwalimu Wambua. Joshua is a social worker with Little Angels Network. He testified that they approved the Applicant and issued a certificate that the child was free for adoption. It was his evidence that Little Angels Network approved of the proposed adoption. Mr. Wambua recommended that the adoption application be allowed.
10. The next witness was Ms Karen Njeri Mwangi of the Directorate of Children Services, Mombasa County. Her directorate was served with a Court order to conduct an assessment and to write a report. She testified that they visited the home of the Applicant. It was her testimony that the proposed adoption has family support as it is a kinship adoption. The proposed legal guardian is also a family member. In the report dated 13th March 2024, filed on 18th March 2024, the Directorate recommended the adoption be allowed. The Witness noted that the Applicant and the 2 children she intends to adopt are well-bonded. The Applicant has a good home environment and lives in a 3-bedroom house that she owns.
11. The Applicant was the third Witness. She testified that she wishes to adopt F and her elder brother, MFHK, as they are the children of her late sister. Both children attend [Particulars Withheld] Muslim



School. L testified that she is aware that adoption is permanent. She passionately pleaded with the Court to allow her to adopt the two children.

12. The fourth Witness was KRM, the court-appointed guardian-ad-litem. She presented her report. K testified that she visited the applicant's home. She was satisfied with the Applicant's home environment and stated that the adoptive children were in safe hands. Ms. Mohamed recommended the adoption.
13. The last Witness was SWK. S is the sister of the Applicant (and also of the children's biological mother). She is the proposed Legal Guardian of the children. She is aware of the proposed adoption and is supportive. S is married with one child of her own. S testified that if L became unable to raise the children for any reason, she would step in. Her husband is aware of her commitment and is supportive.

Analysis and Determination

14. 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.
15. This is a kinship adoption. The Applicant is the aunt of the child. The child's mother is deceased, while her father's present whereabouts are unknown as he was never present in the life of F.
16. Regarding the child's nationality, it is clear that she is of Kenyan nationality.
17. 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.
18. Concerning the Applicant's suitability, she is a Kenyan citizen aged 49 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.
19. Consequently, I have no doubt that she has met the necessary requirements to adopt Master Favour. 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.”
20. 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.
21. 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.”

1. As stated earlier, F’s mother died. Her father’s present whereabouts are unknown; he never played any role in F’s life. In the circumstances, she needs basic necessities like food, shelter, education and clothing, which the Applicant has stepped in to provide. From the evidence adduced, she 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.”

Disposition

23. Based on the foregoing, I find and hold that the adoption application has merits. Consequently, I issue the following orders: -
 1. FSK (a child) is hereby declared a Kenyan citizen by birth;
 2. The Consent of the biological father of FSK (a child) is hereby dispensed with;
 3. The Applicant, LBAK, is hereby authorised to adopt FSK (a child);
 4. FSK (a child) shall from the date hereof be known as F FSK;
 5. SWK is hereby appointed as the Legal Guardian of F FSK and entrusted with the responsibility of taking care of her in the event that the Applicant becomes deceased or is otherwise permanently unable to take care of F FSK before she attains the age of majority;
 6. The Registrar General is hereby ordered to make an entry recording the adoption order made herein and the date of birth of F FSK as being 15th December 2014 in the Adopted Children’s Register; and
 7. The guardian-ad-litem, KRM, is hereby discharged.
24. Orders accordingly.

DATED AND SIGNED THIS 5TH DAY OF APRIL 2024 AT MOMBASA.

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GREGORY MUTAI

JUDGE

In the presence of: -

Ms. Katisya for the Applicant;



No appearance for the Respondent; and
Arthur - Court Assistant.

