



REPUBLIC OF KENYA



**In re KA (Minor) (Adoption Cause E003 of 2023)
[2024] KEHC 5952 (KLR) (22 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 5952 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
ADOPTION CAUSE E003 OF 2023
F GIKONYO, J
MAY 22, 2024
IN THE MATTER OF THE CHILDREN ACT
KA..... MINOR**

**IN THE MATTER OF
SKD AND ATD APPLICANT**

JUDGMENT

Adoption

1. By an Originating Summons dated 2nd November, 2023, the applicants applied for orders: -
 - i. That MON be appointed guardian ad litem for the child.
 - ii. The court to authorize the applicants to adopt the child herein.
 - iii. The court to direct the Registrar General to change the name of the minor herein from KA to MJD;
 - i. The court to direct the Registrar General to make an entry in the Adopted Children's Register recording the adoption and subsequent the Registrar of Births and Deaths shall issue a Certificate of Birth in the names of the applicants as adoptive parents.
2. The application is premised upon the grounds in the application and the statement in support of the application and further stamen in support of the application.
3. It has been averred that the child was abandoned in some bush on 14th March 2022, and was on 16th March 2022, officially committed to the Olmalaika Children's Home by the Children Court at Narok in Care and Protection case No P/C E028 of 2022.
4. The child was placed in their custody and care because he needed specialized medical attention.



5. The police have confirmed that their investigations on the parentage and abandonment of the child bore no fruit. A report to that effect has been annexed as SKDATD4.
6. The child has been and still is under their foster care, hence, the child is free for adoption. Certificate is provided as SKDATD-5.
7. They have the care and control of the child since 18th March, 2022. Forster Care Placement order and undertaking are provided as SKDATD-6a, b & c.
8. The Children's Home has no objection to adoption of the child.
9. The applicants who are citizens of the USA are coordinator and executive director of an NGO called [Particulars withheld] which is registered in Kenya. They are the founder members of the said NGO.
10. They have established their home at Maji Moto in parcel number CIS-Mara/Maji Moto/xxxx which is registered in the name of their NGO, within Narok County where they live with the child and their other two biological children.
11. They took the child to the USA for specialized treatment through a court order in Narok CMCC MISC/E027/2022 which is provided through the further statement dated 20th May, 2024, and came back with the child as per the order.
12. The child had to be taken back for further treatment in November 2023, but, they were not able to travel with the child because the American Embassy declined to issue the child a visa on the basis of the court order, and advised them to obtain an adoption order. Hence, this application.
13. The child still requires the specialized treatment for his condition.
14. They are financially stable to take care of the child, and they have no any adverse interest to the child's interest. They want the best interest of the child.
15. They have proposed MON as guardian ad litem.
16. The children's officer filed adoption reports dated 3rd May, 2023, 13th May, 2024, and special circumstances adoption report dated 20th May, 2024.
17. These reports recommend to the court, the appointment of the guardian ad litem and adoption of the child by the applicant.
18. According to the reports, the child was abandoned and was placed in Olmalikia Children Home. The child was diagnosed with delayed milestones, bossing skull, big skull, sunset eyes, limbs hypotomia, rickets, acute malnutrition, hydrocephalus, and was referred to paediatric review. Medical reports to that effect have been produced.
19. The reports are categorical that, they were unable to get a local person who was fit for foster care of the child, and so they recommended the applicants for foster placement to assist the child receive the required paediatric examination and treatment. The two were willing and accepted to take the child into their home.
20. The reports made pertinent observations and recommendations. One, the child suffers a severe medical condition which qualifies as special consideration in the best interest of the child in these proceedings. Two, the medical physician has also recommended the child to be considered under special circumstances by the court. And, three, they exhausted all local arrangements for placement of the child and failed to secure any. They therefore, made recommendation that the application before the court be considered in the best interest of the child under section 8 and 191(ii) of the *Children Act*.



Analysis and Determination

21. 'A child's best interests are of paramount importance in every matter concerning the child.' (art. 53(2), the Constitution of Kenya). This constitutional principle is also international principle which guide resolution of any matter concerning a child.
22. Inter alia, every child has the right 'to basic nutrition, shelter and health care' (art. 53(1)(c) of the Constitution of Kenya, 2010).
23. In section 6(1) of the Children Act, 'Every child shall have the right to life, survival, wellbeing, protection and development'
24. The record is replete with medical evidence and other evidence that the child herein suffers from a severe medical condition; severe mental and physical delays, experiencing neurological problems which requires follow-up with specialists; and upon evaluation, the doctors were of the opinion that the child requires 'even more critical and interventional medical care than could be provided in Kenya' (Report by New Frontiers Health Care, Inc, dated 15th May, 2024).
25. Evidence show the applicants have taken foster care of the child and has taken him for specialised treatment in the USA. The child was to be reviewed further in November, 2023, but, the appointment was not to be because the American embassy declined to offer him a visa due to lack of adoption order. Such scrutiny is necessary in light of increased cases of child trafficking. But, according to the applicants, they were advised to obtain an adoption order for the child.
26. The turn of events brings the court to the point of pondering the best interests of the child especially, the right to life, survival, wellbeing, protection and development as well as healthcare of the child.
27. The survival of the child and development as well as to healthcare are at real and visible risk of severe deprivation or total decimation. Efforts undertaken by the Children office reveal that they were not able to secure a local person to take care of this child in need of care and attention.
28. The child's condition also brings him under another category of persons with disability which tightens the duty of the court to ensure the child's bests interests are achieved.
29. The child has been taken into the home and family of the applicants where he has the company of the two biological children of the applicants. The whole family has been attending court and it appears a wonderful family.
30. A reasonable surmise therefore, is that, the best interests of the child will not be achieved by denying the adoption. The best interests of this child are achieved in granting the adoption in light of the special circumstances of this case.
31. The children's officer brings this adoption within section 191 of the Children's Act.
32. Section 191 of the Children Act provides as follows: 191 Inter-country adoptions
The Court may make an adoption order in respect of a child on the joint application of two spouses who are not citizens or residents of Kenya, in this Act referred to as an "inter-country adoption", if the applicants –
 - a. have satisfied the Court that –
 - i. all efforts to trace the child's parents and relatives, and reunify with them have, despite State support, failed; and



- ii. all local arrangements for the placement of the child in family based alternative care have been exhausted and failed;
 - b. have obtained the consents specified in Section 186(8);
 - c. have satisfied the Court that the country where they ordinarily reside and where they intend to reside with the child immediately after the making of the adoption order will respect and recognise the adoption order and grant resident status to the child; and
 - d. have been authorised and recommended as persons who are fit, including being morally fit and financially capable, to adopt a foreign child by a competent government authority or Court of competent jurisdiction in the country where they intend to reside with the child immediately after the making of the adoption order.
- 33. The applicants who are spouses, have satisfied the court that: -
 - i. all efforts to trace the child's parents and relatives, and reunify with them have, despite State support, failed;
 - ii. all local arrangements for the placement of the child in family based alternative care have been exhausted and failed;
 - iii. The adoption is sought in good faith, honesty, lawful purposes and in the best interest of the child;
 - iv. The applicants will not do anything prejudicial to the child, his life, limb, wellbeing, and person;
 - v. In the circumstances of this case, the applicants will always act in the best interest of the child including, taking of all necessary legal steps permitted under the law of the USA where they are citizens, to have the the adoption order respected and recognised and the child to be granted resident status;
 - vi. They have been recommended by the children office, Narok, as persons who are fit, including being morally fit and financially capable, to adopt the child; and
 - vii. They will always report to the court as may be ordered or as is necessary on any matter of which they are required to act or take steps.
- 35. The child was abandoned and the parents are not known. The consents required under section 186(8) of the *Children's Act* are dispensed with.
- 36. The court is satisfied that MON is fit to be, and is hereby appointed in accordance with section 188(1) of the *Children's Act*, and is bound by section 188 thereof in execution of his mandate as the guardian ad litem for the child.
- 37. The court also authorizes the applicants to adopt the child herein under section 191 of the *Children's Act*.
- 38. And, further orders and directs: -
 - i. That the Registrar General shall change the name of the minor herein from KA to MJD;
 - ii. That the Registrar General shall make an entry in the Adopted Children's Register recording the adoption and subsequent the Registrar of Births and Deaths shall issue a birth Certificate in the names of the applicants as adoptive parents.



39. The applicants shall report to the court in six months of the steps taken towards or of the recognition of the adoption order and resident status of the child in the USA. In this case, such structural interdict is absolutely necessary. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAROK THROUGH MICROSOFT TEAMS ONLINE APPLICATION, THIS 22ND DAY of MAY, 2024.

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F. GIKONYO M

JUDGE

In the Presence of: -

Ombati for the applicants

Otolo C/A

