



**In re MKMM (The Child) (Adoption Cause E162 of 2023)  
[2024] KEHC 5527 (KLR) (Family) (3 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 5527 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**FAMILY**

**ADOPTION CAUSE E162 OF 2023**

**PM NYAUNDI, J**

**MAY 3, 2024**

**IN THE MATTER OF THE CHILDRENS ACT NO. 29 OF**

**2022**

**AND**

**IN THE MATTER OF MKMM (THE CHILD)**

**IN THE MATTER OF**

**LMM ..... APPLICANT**

**JUDGMENT**

1. *Vide* Originating Summons, dated 22nd August, 2023 the Applicant herein seeks the following orders, that:-
  - i. She be authorized to adopt MKM (the child) who is a Kenya Female Citizen born on the 21<sup>st</sup> August, 2009.
  - ii. Upon her adoption, the child will maintain the name MKMM.
  - iii. MM be appointed as the legal Guardian of MKMM.
  - iv. The Registrar General be directed to enter this adoption into the register of Adoptions and a subsequent Birth Certificate be issued by the Registrar of Births and Deaths.
1. The Applicant is a Kenyan Citizen by birth and currently resides in the United States of American in Maine, Iowa where she is a Health Care Worker.
2. Initially, the Applicant was married to the late MMM and out of that union they were blessed with 4 Children. She later remarried a US National RMG whom the Applicant lives with in the US and he support the adoption proceedings.



3. Through online platform in Court, the Applicant stated that the minor is her granddaughter, daughter to her daughter, hence kinship adoption provided under Section 193 of the [Children Act 2022](#).
4. It's her averment that her daughter died on 1<sup>st</sup> July, 2022. The deceased was survived by 2 children. the Applicant has already processed the adoption of the minor's brother.
5. It's Applicant assertion that the children stay in her house at Onyonka with her son who is the minors' uncle. She further averred that she provides for all their material needs. The Applicant has been interviewed by the Director of Children's Services and the Child Welfare Society and they have reconsidered the adoption.
6. The wish of the Applicant is that after adoption she will be able to move with the Children to the US to nurture them.
7. MKMM (the child herein) is the subject of the present adoption proceedings was born on 21<sup>st</sup> August, 2009. The child was born to the late FSM who died on 1<sup>st</sup> July, 2022. The child lives in Langata in the Applicant's house together with his uncle and his younger sibling. The child attends to school at [Particulars withheld] Academy where she is in Form 1.
8. The child was present in Court and averred that she is 14 years old, attends school in at [Particulars withheld] Girls High School, Juja where she is in Form 1. She further recognized the Applicant as her grandmother and subsequently consented to the adoption proceedings.
9. Upon an assessment and approval by Child Welfare Society of Kenya Adoption, consent from the minor, the minor was declared free for adoption by the same Adoption Society Vide a Certificate of Freeing Serial Number xxxx dated 29<sup>th</sup> May, 2023 under Section 156 (1) of the [Children Act 2022](#) And the Adoption Regulations.
10. On 19<sup>th</sup> October, 2023 this Court issued an order appointing RA as the child's *guardian ad litem*, and further directing the *guardian ad litem* and the Director of Children's Services to investigate and file their respective reports within 45 days.
11. Pursuant to Section 102 of the [Children Act 2022](#), before this matter came up for hearing, Ezekiel Kimani Assistant Director Nairobi County Children Services prepared and filed a report which was countersigned by Mary Atati Assistant Director of Children's Services on 20<sup>th</sup> February, 2024 in respect of the proposed adoption of the minor by Applicant. He stated that the minor has bonded well with the Applicant, the Applicant is socially and financially stable to take care of the child. MM (Applicant's sister) consented to her appointment as the legal guardian of the child herein.
12. Through online platform Ms. Makaya states that she resides in Kakamega and she is prepared to assume parental responsibilities should circumstances require and subsequently she understands what the role of Legal Guardian entails.
13. The Children's Officer further asserted that, this being a Kinship Adoption it will be in the best interest of the minor since the Applicant have met the legal requirements as provided by [Children Act 2022](#). He further stated that the Applicant has proved capable of taking on parental responsibility over the child in this matter who has been under the Applicant continuous care and control. The child has strongly bonded with the adoptive Applicant, hence recommended for the Adoption Proceedings.
14. Another Report was filed by the Adoption Society in which they evaluated all requirements for the kinship adoption and recommended for the adoption of the child herein by the Applicant.



15. It was evidence from the Court that all statutory bodies consented to the adoption of the current adoption proceedings.
16. Additional, other Statutory Reports filed stated that the Applicant is financially and emotionally capable of providing the child with care, protection and education. She has no criminal record as evidenced by copy of Police Clearance Certificate Reference Number xxxxx/2013 dated 19<sup>th</sup> March, 2013. This Court has evaluated the facts of this adoption. This is a Kinship adoption. It is evident that the Applicant has fulfilled all the legal requirements relative to the adoption of the child.
17. This Court observed the Applicant with the minor in Court and it was evident that in the period that the Applicant has had the custody of the child, the child has bonded well with the her.
18. This is a Kinship Adoption. It is evident that the Applicant has fulfilled all the legal requirements relative to the adoption of the child. This Court has satisfied itself that the Applicant is qualified and able to take care of the child.
19. After carefully assessing the records herein, I am satisfied that the Applicant has have fulfilled all the legal requirements relating to the Child's adoption. Section 186 of the Children Act, 2022 provides. The court may make an adoption order on application by-
  - (1)
    - (a) Sole applicant; or
    - (b) Two spouses jointly.
  - (2) The court shall not make an adoption order in any case unless-
    - i. the applicant has attained the age of twenty-five years, but is not above the age of sixty-five years; and
    - ii. The applicant, or both of the applicants in a joint application, is more than twenty-one years older than the child.
  - (3) The restrictions in subsection (2) shall not apply in any case where a sole applicant or one of the joint applicants is the mother, father, or relative of the child.
20. This Court is alive to the Jurisdiction of the High Court vide Article 165 Constitution of Kenya 2010 and Section 183(1) Children Act 2022. The Court is conscious of the law; Article 53 Constitution of Kenya 2010, Section 8 of Children Act 2022 and the UN Convention on the Rights of the Child & African Charter on the Rights & Welfare of the Child all amplify on the best interests of the child.

### **Determination**

21. On the basis of a careful examination of the documents presented before me as well as the observations made therein, this Court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicant.
22. Subsequently, I allow the prayers sought in the Application dated 23<sup>rd</sup> August, 2023 and order as follows:
  - i. The Applicant LMM be hereby allowed to adopt MKMM (a child).
  - ii. Henceforth, the child shall be known as MKMM.
  - iii. Her date of birth shall be 21<sup>st</sup> August, 2009.



- iv. She is presumed to be a citizen of Kenya by birth.
- v. MM shall be the Legal Guardian of the child.
- vi. The Registrar General to enter this order in the Adoption Register.
- vii. The Director Immigration is authorised to issue the child with a Kenyan Passport.
- viii. The *Guardian Ad litem* is discharged.

It is so ordered.

**DELIVERED DATED & SIGNED IN OPEN COURT ON 3<sup>RD</sup> MAY, 2024.**

**P. NYAUNDI**

**JUDGE**

**In presence of: -**

Fardosa Court Assistant

