



REPUBLIC OF KENYA



**In re GM (Minor) (Adoption Cause E005 of 2024)
[2024] KEHC 9095 (KLR) (16 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 9095 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
ADOPTION CAUSE E005 OF 2024**

AC BETT, J

JULY 16, 2024

IN THE MATTER OF AN APPLICATION FOR ADOPTION OF G. M. (MINOR)

IN THE MATTER OF

NLLM APPLICANT

JUDGMENT

1. By an Originating Summons dated 21st June, 2024, brought under the *Children Act*, the applicant seeks orders authorizing him to adopt GM, a minor.
2. According to the documents and depositions filed in court, GM was born to AGO on 24th July, 2006 at Pumwani Hospital. AGO who later got married to the applicant under the *Marriage Act* on 27th July, 2022, was single at the time she gave birth to GM. AGO averred that the biological father of GM has never been in the minor's life and as the time of the application for adoption, his whereabouts remain unknown. AGO swore an affidavit on 21st June, 2024 in support of her averments.
3. AGO, has consented to the adoption of her daughter GM by the applicant since the applicant has been the defacto father figure to the minor from when AGO and the applicant started cohabiting.
4. According to the statement in support of the application, the applicant is a Kenyan citizen aged sixty four (64) years. He got married to AGO in the year 2022 after his divorce from his first wife. The applicant is a father of two adult children who have expressed that they have no objection to the intended adoption.
5. The applicant, who is a teacher, works in San Antonio in the United States of America but has two homes in Kenya, one in Kiambu and another one in Kakamega Central Sub-County. The applicant is also a resident of the United States of America.
6. The applicant filed together with the originating summons, copies of documents in support of his application comprising the following:-



- (a) Applicant's National Identity Card
 - (b) Marriage Certificate
 - (c) Joint application letter to the Kenya Children's Homes
 - (d) Police Clearance Certificate
 - (e) Certificate of Acknowledgement
 - (f) Guardianship Confirmation Form and Identity Card
 - (g) Reference Church letter
 - (h) Referee forms
 - (i) Medical records
 - (j) Bank statements
 - (k) Pay slips
 - (l) Consent by applicant's biological children and identity Cards
 - (m) Case committee ratification form
7. Additionally, the applicant filed the following documents in respect to the minor:-
- (a) Freeing Standard Certificate
 - (b) Freeing Summary
 - (c) Birth Certificate
 - (d) Medical particulars of the child
 - (e) AGO's letter of consent and Identity Card
 - (f) Certificate of acknowledgement
 - (g) Affidavit on biological father
 - (h) Child's consent
 - (i) Final affidavit of consent
8. Adoption in Kenya is governed by Part XIV of the *Children Act*, 2022. Section 184 of the *Children Act* sets out the prerequisites that must be met before one is allowed to adopt a child. The child must have attained the age of six weeks and the Council must have declared the child free for adoption.
9. The applicant is a step-father to the minor. This is therefore a kinship adoption. Being a Kenyan citizen resident in the United States of America, the applicant is qualified to adopt the minor as a local. According to the Guidelines for Alternative Family Care of Children in Kenya page 153:-
- “Kinship adoption is adoption by adopters who are relatives within the extended family of the child. Kenyans living abroad and wishing to adopt a Kenyan child will adopt as Kenyans by way of domestic adoptions.”



Although the applicant clearly works abroad, he is considered a local for purposes of the adoption by virtue of his Kenyan citizenship.

10. I have perused the adoption bundle in its entirety and I am satisfied that the applicant has met the legal requirements to adopt the child. He has the legal capacity being mentally and medically fit; he also understands the ramifications of adoption for himself and his other family. He is prepared to take care of the minor as his own child.
11. The applicant is qualified within the requirements of Section 186 (2) (a), of the *Children Act* to adopt the child who is at least twenty one (21) years younger than him. He has not yet attained the age of sixty five (65) years and is not precluded from adopting a child.
12. From the documents produced in court, the applicant is stable and emotionally and financially capable of providing for the child.
13. The guardian ad litem that was earlier appointed by court filed a report on 10th July, 2024 in which she confirmed that the applicant has been taking care of the minor by meeting her emotional, educational, medical and other basic needs. She stated that the applicant is keen on securing the minor's future and has been a good father figure to her in replacement of her biological father who has never been present in her life. She termed the applicant a loving father and recommended him for the adoption.
14. On 15th July, 2024, the Kakamega Sub-County Children's officer filed his report. According to him after interviewing the applicant, the child and the child's mother, he established that the criteria for adoption have been met by the parties but it was necessary for the child's concerns that the applicant may change in future as people do be addressed.
15. On 16th July, 2024, the parties appeared in court where we sought to understand the minor's concern. The minor is seventeen (17) years old. She is a few weeks shy of her 18th birthday. She expressed her willingness to be adopted and in light of her age, the court is persuaded that she fully understands the adoption process and is willing to be adopted by the applicant. Since she will soon attain the age of majority, she is better placed than most minors to articulate her concerns. The court is of the opinion that the child's concerns stem from a childhood where the father disappeared when the child was of tender age.
16. Ms. Mumo appearing for the Adoption Society said that they have no objection to the adoption.
17. Section 8 of the Children's Act states:-
 - “1. In all actions concerning children, whether undertaken by a 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.”
18. The question before us is whether the intended adoption shall be in the best interest of the child.
19. The child is currently an adolescent. According to her, she last saw her biological father when she was 4-5 years. That is twelve (12) years ago. To date, he has not taken part in the child's upkeep nor given her psycho-social support. It is when the child's mother got married to the applicant when she began to experience paternal love and presence. It is no wonder that she is skeptical that the applicant could change. She may be thinking in her adolescent's mind, that it is too good to be true.



20. The applicant has demonstrated his willingness and readiness to adopt the child. He has secured consents from his two biological children. He has stated that he is aware that the child, once adopted, will stand to inherit from him. The reports from the Children's department and the Adoption Society depicts a loving couple who want to integrate the wife's daughter into the family.
21. I am satisfied that it is in the best interest of the child for the court to make an adoption order pursuant to Section 186 of the *Children Act*.
22. I therefore make the following orders:-
 - (1) That the applicant NLLM be and is hereby authorized to adopt the child, GM.
 - (2) That JMO being the child's maternal grandmother be and is hereby appointed the legal guardian of the child should any misfortune befall the applicant
 - (3) That the Guardian ad Litem be and is hereby discharged forthwith.
 - (4) That the Registrar General be and is hereby directed to make, in the Adopted Children's Register, an entry recording the adoption and to issue a certificate to that effect.

These are the orders of the court.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 16TH DAY OF JULY 2024.

A. C. BETT

JUDGE

In the presence of:

The Applicant

Ms. Anguba for the Applicant

Ms. Pauline Mumo (virtually) for the Adoption Society

Court Assistant: Polycap Mukabwa

