



**In re SOM (Minor) (Adoption Cause E077 of 2024)
[2024] KEHC 8033 (KLR) (Family) (4 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 8033 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E077 OF 2024
H NAMISI, J
JULY 4, 2024**

IN THE MATTER OF

POK APPLICANT

JUDGMENT

1. Before this Court is the Originating Summons dated 25th March 2024, Statement in Support of the Application for an Adoption Order and Affidavit in Support of the Application, seeking:
 - i. That the Applicant be authorised to adopt SOM, a minor who is to be known as SOO and the Registrar be directed to enter this adoption into the Register of Adoptions;
 - ii. That Diana Moige Mose be appointed as the legal guardian of the minor;
 - iii. That the child be presumed to have been born in Kenya;
2. The matter was canvassed by way of viva voce evidence on the virtual platform on 20th June 2024.

The Child

3. The child (male) who is the subject of these proceedings, was born on 19th June 2011 and is currently aged 13 years. He was born to EMK (Deceased) and SMM. The minor attends school in Nairobi and is in Grade 7. He lives with his mother and 2 younger brothers. The child knows the Applicant, who is his uncle.

The Applicant

4. The Applicant is a Kenyan currently residing in Minnesota, USA and works as an Accountant. The Applicant is an uncle to the minor herein, whose biological father passed away in 2021. The Applicant is aged 52 years, is unmarried and has two biological children, aged 25 and 18 years. The two children have filed their Affidavits of Consent, both dated 21st March 2024.



5. It is the Applicant's assertion that the minor is his nephew. The minor's biological father, EMK (Deceased), was his brother hence the application for kinship adoption as provided under section 193 of the *Children Act*. It is the Applicant's wish to adopt his nephew and eventually relocate him to USA with a view to providing the minor with better opportunities available to him in the USA. The Applicant stated that he has been taking care of the minor since the minor's biological father passed on by contributing to the minor's school fees and maintenance. The Applicant confirmed that he fully understands the legal implications of the Adoption Order.
6. The motivation of the Applicant to adopt SOM is contained in his statement in support of the Application as follows:
 9. that the purpose of the adoption is to legally allow me to become the child's father, a role that has been executed for the last 2 years with utmost love and commitment which will also give the child a sense of identity and more chances in life.
7. The Applicant exhibited his Bank Statements, Pay Slips, Police Clearance Certificate, medical particulars, title deeds, recommendations and referee information, all pursuant to the provisions of The *Children (Adoption) Regulations, 2020*. These disclose that the Applicant is financially, socially, physically and mentally fit to adopt SOM.
8. Additionally, pursuant to section 195 of the *Children Act*, the Applicant provided letters of consent from a long-time friend, Diana Moige Mose, agreeing to be appointed as the legal guardian of the child in the event that anything untoward happens to the Applicant.

The Biological Parents

9. The biological mother, SMM, was widowed in 2021, when her husband passed on. She has 3 children (male). The subject minor is her first born. The Mother confirmed that she fully understands the legal implications of the Adoption Order and knows that the minor will eventually relocate to the USA. She filed an Affidavit of Consent dated 21st March 2024.
10. The biological father, E.M.K, died on 15th August 2021. His Certificate of Death is annexed at page 119 of the supporting documents.

The Adoption Approval Process

11. KKPI Adoption Agency conducted an assessment of the Applicant and sought the consent of the biological mother, the minor as well as members of the extended family. The family indicated that they were willing to have the minor adopted by the Applicant. The Agency filed its report dated 28 February 2024 recommending the adoption of the minor. The minor was declared free for adoption by the KKPI Adoption Agency vide a Certificate of Declaring a Child Free for Adoption serial number 903.
12. On 11th April 2024, the Court issued an order appointing Phyllis Nyakinyi Kamau as the minor's Guardian ad Litem, and further directing the Guardian ad Litem and Director of Children's Services to investigate the suitability and fitness of the Applicant and subsequently file their respective reports within 45 days.
13. The Guardian ad Litem filed her report dated 17th April 2024, noting that the Applicant will provide a safe, loving and nurturing home for the child. The Directorate of Children's Services, Nairobi County filed its report dated 29th April 2024, recommending the adoption of the child by the Applicant herein.



14. Section 193(1) of the *Children Act* provides that kinship adoption order may only be made in favor of a relative of the child. In this instance, the Applicant is a paternal uncle to the child.
15. In view of the foregoing, the court is satisfied that:
 - i. The proposed adoption is a kinship adoption, meaning that the child will continue to be within the family.
 - ii. The adoption will be in the best interest of the child; and
 - iii. The Applicant has been approved as a prospective adoptive parent by competent social workers through a duly registered Adoption Society under the Department of Children Services, thus he is able to effectively handle his parental responsibilities
16. Accordingly, the Originating Summons is allowed and the following orders are hereby issued:
 - i. The Applicant, POK, is hereby authorised to adopt the child currently known as SOM, and will henceforth be known as SOO;
 - ii. The Registrar General is directed to enter this Order in the Adopted Children's Register and to issue a Certificate to that effect;
 - iii. That the Guardian ad Litem is hereby discharged;
 - iv. That DMM is hereby appointed as the legal guardian of the child SOO.

DATED AND DELIVERED AT NAIROBI THIS 4 DAY OF JULY 2024

HELENE R. NAMISI

JUDGE

Delivered on a virtual platform in the presence of

....Ms. Wairimu.....for the Applicant

