



**In re AW (Minor) (Adoption Cause E069 of 2024)  
[2024] KEHC 11124 (KLR) (Family) (19 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 11124 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
ADOPTION CAUSE E069 OF 2024  
CJ KENDAGOR, J  
SEPTEMBER 19, 2024  
IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF THE LAWS OF KENYA  
AND  
IN THE MATTER OF ADOPTION OF BABY AW (MINOR)  
AND  
IN THE MATTER OF  
EWM ..... APPLICANT**

**JUDGMENT**

1. Before Court is the Originating Summons dated February 14, 2024, in which the Applicant seeks the following orders;
  1. That the Applicant be authorized to adopt the child, AW, a Kenyan citizen born on 13<sup>th</sup> October 2010.
  2. Upon adoption, the child should be known as AWW.
  3. That MW of Kenyan National Identity Card Number is appointed as the Legal Guardian of the child Baby AW.
  4. That the Registrar General be directed to enter this adoption into the Register of Adoptions and a subsequent Birth Certificate to be issued by the Registrar of Births and Deaths.
  5. That the Director of Immigration be authorized to issue the child AW with a Kenyan passport.
2. The Originating Summons is supported by the Applicant's affidavit of even date. The matter was canvassed through oral evidence on the online platform.



3. The Applicant is a Kenyan citizen by birth who resides in the United Kingdom and works as a Nurse at [Particulars Withheld]. According to the records before the Court, she was born on 17<sup>th</sup> November, 1962, which means she is currently 62 years old.
4. The Applicant has made the Application as the maternal aunt to the minor, who was born on 13<sup>th</sup> October, 2010 and is, therefore, aged 13 years and 11 months. The mother of the minor, P.W.N., is said to be the Applicant's cousin. The Applicant has exhibited the Affidavit sworn on 25<sup>th</sup> October, 2023 by the minor's biological mother, giving her express consent to adopting the minor to the Applicant. Also, the consents of the biological mother of the minor, M.W.W. and the biological brother, R.N., were produced by the Applicant.
5. The Applicant concedes that she does not live with the minors in Kenya but has lived with the minor before. She asserts that the minor's father's whereabouts are unknown as he is alleged to have "disappeared" without a trace. She depones that the minor lives with her biological mother and her grandfather. The Applicant has a daughter of her own and lives within the United Kingdom. The Applicant leads a stable lifestyle and can take the utmost care of the minor.
6. In support of the Application, the Children's Office under the Directorate of Children's Services has supplied a copy of its Report dated 6<sup>th</sup> February, 2024 to the Court. The Court has also been supplied with the Report dated 19<sup>th</sup> February, 2024 from the Kenya Children's Homes Adoption Society. The Reports give the particulars of the Applicant as the prospective adoptive parent and the biological mother's particulars. They both state that interviews with the Children's office were conducted with the biological mother, the minor and their grandfather, who is living with them. The Report by Kenya Children's Home Society stated that the relevant officers visited and inspected the Applicant's house in Buruburu, where she resides when she is in the country. The Reports also give background information about the Applicant, further information, and relevant particulars concerning the entire prospective adoption herein. In the end, both Reports recommend that the adoption application be allowed.
7. Further supporting the Application, the Court has also been supplied with Affidavits and/or consents sworn by the minor's biological mother, and by the minor's two siblings, and her maternal grandfather. The minor's consent was also produced. The Court has also been supplied with the minor's Birth Certificate, Certificate of Declaring a Child Free for Adoption, Identity Cards for the Applicant, the Applicant's mother, W.N.M (Guardian *ad litem*), and the Minor's sister (M.W.M., the prospective Legal Guardian), Applicant's Medical Report, House Ownership Agreement, Bank Account and Employment Records.
8. The Applicant has also produced a Certificate of Good Conduct issued by the Directorate of Criminal Investigations, Kenya, dated 2<sup>nd</sup> January, 2024. The same indicates that there is no record of the Applicant having previously been charged with or convicted of any criminal offence or other offence.
9. On 16<sup>th</sup> May, 2024, this Court appointed W.N.M as the Guardian *ad litem* pending hearing and determination of this Cause.
10. The Applicant also nominated or proposed the minor's sister, M.W.M., for appointment as the minor's Legal Guardian in case of the Applicant's death or incapacity.
11. On 11<sup>th</sup> July, 2024, I took the applicant's evidence (PW1). She confirmed that she wished to adopt the minor. She reiterated her averments in her supporting affidavit. She stated that she had lived with the minor before. The minor is excited about the adoption and has consented to it. She understands the implications of adoption. She stated that she has the means to take care of the minor. Her daughter has consented to the adoption.



12. On the same date, I took the testimony of the minors' biological mother (PW2). She confirmed that the Applicant is her cousin. She then stated that she is confident that the minor will have a better life in the custody and maintenance of the Applicant. She confirmed that she has voluntarily consented to her cousin applying for the adoption and has willingly supplied the documents filed supporting the Application. She also confirmed that her other children have consented to the adoption of the minor. She understands the implications of adoption. She reiterated that she truthfully does not know the whereabouts of the minor's father.
13. On examination by the Court, the minor reiterated her willingness and readiness to be adopted by the Applicant.
14. The proposed Legal Guardian, M.W.M (PW4), told the court that she understands her role as the Legal Guardian. She agreed to the adoption.
15. W.N.M. (PW5), the Guardian *ad litem*, produced a report dated 4<sup>th</sup> June, 2024 recommending the adoption.
16. Ms. Kihara from the Directorate of Children's Services office produced a report dated 6<sup>th</sup> June, 2024. She stated that the Secretary of Children Services recommended the adoption by the applicant.
17. Pauline Mumo from the Kenya Children's Home told the court they did investigations as required and filed a Report dated 19<sup>th</sup> February, 2021 recommending the adoption. The report was supplemented after the legal guardian was substituted.

### **Determination**

18. Regarding litigation concerning minors, Article 53 (2) of the [Constitution](#) stipulates the over-arching principle which must apply whenever any decision concerning a child is to be made to be the "best interests" of the minor. It provides that:-

"A child's best interests are of paramount importance in every matter concerning the child"

19. This provision is echoed in Section 8 (1) of the [Children's Act](#), No 29 of 2022.
20. Regarding the law of adoption in Kenya, the relevant provisions are to be found in Part XIV of the [Children's Act](#), 2022, which provides;

- " 183. Subject to this Act, the High Court may, on an application made in the
  - (1) prescribed form, make an order, in this Act referred to as "Adoption Order", authorising an applicant to adopt a child.
  - (2) All proceedings under this Part shall be heard and determined in chambers, and the identity of the child and the applicants shall be kept confidential.
  - (3) In this Act, adoption means local, kinship and foreign adoption.
  - (4) For the purposes of this Part—(a) "kinship adoption" has the meaning assigned to it in Section 2; (b) "local adoption" means an adoption in relation to which—(i) the child is resident in Kenya; and (ii) the adopting parent or parents are Kenyan nationals resident in Kenya; and (c) "foreign adoption" means an adoption in relation to which —(i) the adopting parent or parents are Kenyan nationals with dual citizenship; (ii) the adopting parent or parents are foreign nationals whether or not resident in Kenya (iii) the adopting parent



or parents are not Kenyan nationals but are biologically related to the child; or (iv) the adopting parent or parents were once Kenyan nationals but have lost their nationality by operation of the law of the host country to which the prospective parent or parents have a nationality Power to make adoption orders.

184. A person shall not commence any arrangements for the adoption of a child unless —(a)the Council, in accordance with the rules, has declared the child free for adoption; and(b)the child has attained the age of six weeks.  
.....

185. Any child who is resident within Kenya may be adopted whether or not the child is a Kenyan citizen, or was born in Kenya.

(2) Without prejudice to the generality of subsection (1), no Court may entertain an application for an adoption order in respect of a child unless—(a) the child concerned has been in the continuous care and control of the applicant within Kenya for a period of three consecutive months preceding the filing of the application; and (b) the application for an adoption order is supported by a report made by a duly registered adoption society recommending that an adoption order be made.

(3) The report referred to in subsection (2) (b) shall contain the society’s findings and recommendations in respect of the child and the applicant or applicants, as the case may be.

(4) The following children shall be eligible for adoption —(a) a child who is an orphan and has no guardian or caregiver able and willing to take care of the child (b) a child who has been abandoned or whose parents’ or guardian’s whereabouts cannot be traced within a period of one year; (c) children who are willingly offered for adoption by their biological parents in accordance with regulations made under this Part.

186. The Court may make an adoption order on application by—(a) a sole applicant; or (b) two spouses jointly. (2) The Court shall not make an adoption order in any case unless—(a) the applicant has attained the age of twenty-five years, but is not above the age of sixty- five years; and (b) 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...(8) Subject to the provisions of this section, an application for an adoption order in respect of a child shall be accompanied by written consents of the following persons(a) a parent or guardian of the child, or any person who is liable by virtue of any order or agreement to contribute to the maintenance of the child; (b) on the application of one of the spouses, the consent of the other spouse; and (c) in the case of a child who has attained the age of ten years, the child himself or herself ...”

21. As aforesaid, the Adoption applied for herein is within the family and, therefore, what is referred to as a “kinship adoption”. The Applicant desires the minor to join her in the UK once the process is successfully completed.



22. Regarding a moratorium that was issued regarding international adoptions, in the case of *In re R.N.W. (minor)* [2019] eKLR, the Court held as follows:
- “ 11. This is a kinship adoption as the applicant is related to the child since the child's biological mother was a cousin of the Applicant.”
23. *In re J.N.A.* [2018] eKLR, the Court held that:-
- “ The indefinite moratorium issued by the Kenyan cabinet on 27<sup>th</sup> November, 2014 involved inter-country and resident adoptions of Kenyan children by foreigners. It does not affect adoptions by Kenya applicants, even those living abroad. Dual citizenship in our country is anchored in Article 16 of the Kenyan Constitution. According to the Guidelines for Alternative Family Care of Children in Kenya page 153, “kinship adoption is adoption by adopters who are kin or 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. This is therefore considered to be a local adoption.”
24. This Court is satisfied that, in the present case, this is a kinship adoption and is also a local or domestic adoption. The Court is also satisfied that the Applicant is a suitable person with the demonstrated financial and social means to provide and care for the minor and has, in any event, been doing so for a considerable period before making this application. During my interview with the child, I formed the view that the minor and the Applicant share a close bond. She expressly confirmed to the Court her eagerness to be adopted by their aunt.
25. As aforesaid, the Applicant is now almost 62 years old, and the children are 13 years old. In so far as the Applicant has, therefore, attained the age of 25 but is not above the age of 65 and is more than 21 years older than the child, she has also met the threshold set under Section 186 (5) of the *Children's Act*, 2022.
26. Having taken into account the foregoing factors, this Court is satisfied that it would be in the best interest of the minor to be adopted by the Applicant. The Court is further satisfied that all the legal requirements for a kinship adoption have been met.

### **Final Orders**

27. This Court makes the following Orders:
- i. The Applicant, E.W.M., the minor's maternal aunt and the cousin of the minor's mother, is hereby allowed to adopt A.W.
  - ii. M.W.M., the minor's aunt, is hereby appointed the Legal Guardian if the Applicant dies or is incapacitated by ill health.
  - iii. The Guardian *ad litem*, W.N.M. is accordingly discharged.
  - iv. The Registrar General is directed to enter this Order in the Adopted Children's Register.
  - v. Baby AW will be issued a Kenyan passport by the Director of Immigration upon appropriate application.
28. It is so ordered.



**DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS  
ONLINE PLATFORM ON 19<sup>TH</sup> SEPTEMBER, 2024.**

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**C. KENDAGOR**

**JUDGE**

In the presence of:

Court Assistant: Beryl

