



**In re EAA (Minor) (Adoption Cause E032 of 2024)
[2024] KEHC 11256 (KLR) (Family) (19 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 11256 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E032 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 E.A.A (MINOR)**

IN THE MATTER OF

PNS APPLICANT

JUDGMENT

1. Before the Court is the Originating Summons dated 12th February, 2024 in which the Applicant seeks the following orders;
 1. That the Applicant be authorized to adopt E.A.A, a minor and the Registrar General be directed to enter this adoption into the Register of Adoptions.
 2. That the child be presumed to be born in Kenya.
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 residing in Nairobi County. She is the aunty of the minor. She averred that she is the sister of the minor's mother, who passed away on 16th April, 2017. She has been taking care of the minor since then and now wishes to adopt her. She was appointed as the legal guardian of the minor vide Nairobi Misc. E094 of 2021.
4. In support of the Application, the Children's Office under the Directorate of Children's Services has supplied a copy of its Report dated 5th June, 2024 to the Court. The Court has also been supplied



with the Report dated 13th February, 2024 from the Kenya Children’s Homes Adoption Society. The Reports give the particulars of the Applicant as the prospective adoptive parent. The Report by Kenya Children’s Home Society stated that the relevant officers visited and inspected the Applicant’s house at Chokaa, Kigali Court within Njiru Sub-county in Buruburu where she resides. The Reports also provide 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.

5. In further support of the Application, the Court has also been supplied with Affidavits and consents sworn by the minor’s paternal 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 Card for the Applicant, the death certificate of the minor’s mother, identity card for MNS (Guardian Ad Litem) and the Applicant’s Medical Report.
6. The Applicant has also produced a Certificate of Good Conduct issued by the Directorate of Criminal Investigations, Kenya, dated 1st August, 2023. 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.
7. told the court that the parents of the minor are both deceased. She has two biological children. She stated that she understands the implications of the adoption and that her family members have agreed to the adoption.
8. The Children Officer, on behalf of the Department of Children Services, recommended the adoption and produced a report dated 28th June, 2024. He stated that he prepared a report and that the Secretary of Children Services recommended that the applicants be allowed to adopt the minor.
9. J.M.O., the proposed Legal Guardian, told the court that the Applicant is her cousin. She understands the proceedings before the court and the role of a legal guardian and is willing to take up the responsibility of a legal guardian.
10. The court had appointed M.N.S as the guardian ad litem.

Analysis And Determination.

11. 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 in the “best interests” of the minor. It provides that:

“ A child’s best interests are of paramount importance in every matter concerning the child.”

This provision is echoed in Section 8 (1) of the [Children’s Act](#), No. 29 of 2022.

12. 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.

- (1) Subject to this Act, the High Court may, on an application made in the prescribed form, make an order, in this Act referred to as “adoption order”, authorizing 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. (1)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.
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185.

- (1) 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.

- (1) 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

13. As aforesaid, the Adoption applied for herein is within the family and, therefore, what is referred to as a “kinship adoption”. This Court is satisfied that, in the present case, this is a kinship adoption and 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.
14. As aforesaid, the Applicant is now almost 44 years old. She has met the threshold under Section 186 (5) of the *Children’s Act*, 2022.
15. Considering the preceding factors, this Court is satisfied that it would be in the minor’s best interest 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

16. This Court makes the following Orders:-
 - i. The Applicant, P.N.S., the minor’s maternal aunt, is allowed to adopt E.A.A.
 - ii. J.M.M is hereby appointed the Legal Guardian if the Applicant dies or is incapacitated by ill health.
 - iii. J.M.M. is ordered to file a copy of her identification card within 14 days after the delivery of this judgment.
 - iv. The Guardian ad Litem, M.N.S. is accordingly discharged.
 - v. The Registrar General is directed to enter this Order in the Adopted Children’s Register.
17. It is so ordered.

DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON 19TH SEPTEMBER, 2024.

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C. KENDAGOR



JUDGE

In the presence of:

Court Assistant: Beryl

