



REPUBLIC OF KENYA



**In re BOM (Minor) (Adoption Cause 2 of 2022)
[2023] KEHC 3274 (KLR) (Family) (23 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 3274 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE 2 OF 2022
EKO OGOLA, J
MARCH 23, 2023
IN THE MATTER OF THE CHILDREN'S ACT, 2001
AND
IN THE MATTER OF THE ADOPTION OF BOM (MINOR)
AND
IN THE MATTER OF AN APPLICATION FOR KINSHIP
ADOPTION BY RKM AND RCM**

JUDGMENT

1. Before this court is the Originating Summons dated April 20, 2022 by which the applicants RKM and RCM seek the following orders:-
 - a. That the applicants be and are hereby authorized to adopt BOM and the child to be called BOM henceforth.
 - b. That the Registrar General do make the appropriate entries in the Adopted Children's Register in respect of BOM.
 - c. That the court does issue such other orders as may be necessary in the best interest of the child.
 - d. That the cost be in the cause.
2. The Originating Summons was supported by 1st Applicant's Affidavit and further canvassed by way of *viva voce* evidence in open court.
3. The 1st Applicant, RKM as PW1 testified that he is married to the 2nd Applicant RCM and that they reside in the United States of America. The applicants have been helping in taking care of the child since he was a baby as he is the child's relative. The 1st Applicants has five biological children, and his



wish is to adopt the minor so that he can have a chance at a better life in USA. He testified that he works in the transport and logistics sector and hence, he is more than capable of taking care of the minor.

4. PW2 was RY, the guardian ad litem. She testified that she visited the minor and found that she has a very good relationship with the Applicants. They video call each other frequently thus she recommends the adoption.
5. A representative from the Directorate of Children's Services one KE took the stand as PW3. He testified that he visited the minor. The applicants have been the ones taking care of him. Therefore, he recommends the adoption.
6. PW4 was MW a social worker from Little Angels Adoption Network. He testified that a visit to the minor was conducted and his grandparents and it was confirmed that the applicants have been taking care of him since his tender years. Therefore, there is no reservation about the adoption.

Determination

7. I have carefully considered this application for adoption, the Affidavits and Reports on record as well as the relevant law. I have also considered the evidence adduced in open court.
8. This application is one for kinship adoption because the 1st Applicant is the child's uncle. (See Section 2 of the *Children's Act*). One of the Applicant's desires is for the child to receive education both in Kenya and the USA. This does not contravene the moratorium issued by the Cabinet Secretary on November 27, 2014 which involved inter-country and resident adoptions of Kenyan children by foreigners. It does not affect adoptions by Kenyan Applicants, even those living abroad. Dual citizenship in Kenya is anchored in Article 16 of the *Constitution*.
9. A kinship adoption is a domestic adoption. In Adoption Cause 75/2017, *JNA* by Zoo and C A N the Court held that:

“According to the guidelines for alternative Family Care of Children in Kenya pg 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 adoption. This is therefore considered to be a local adoption.”
10. Further to this, the requirements for kinship adoption are well set out in Part XIV of the *Children's Act*. From the Court's record, the applicant has been able to fulfil the conditions stipulated. The conditions are as follows:-
 - a. The applicant is above twenty-five years of age and below sixty five years of age;
 - b. The applicant is a relative of the child;
 - c. The child has been declared free for adoption;
 - d. That all the reports and evaluations conducted indicate that it is in the best interests of the child that the applicant adopts the child as demonstrated by the fact that they are family, and that the applicant has been educating and providing for the child since birth;
 - e. That the child has given her consent to being adopted by the applicant; and
 - f. That the biological parents have given their consent.
11. Further to the aforementioned conditions, the Applicants are engaged in gainful employment in the transport and logistics sector in USA. This is evidenced by the pay slip on record. The Applicants



are also in good health with the potential to provide a good social life for the child. In addition, the extended family is in support of this adoption application.

12. The minor has written a letter consenting to the adoption. The biological mother and father have sworn affidavits consenting to the adoption and relinquishing their parental obligations.
13. The upshot is that I allow the Originating Summons dated April 20, 2022 in the following terms:-
 - a. The Applicants RKM and RCM are hereby authorized to adopt the child BOM.
 - b. WS and BJR are hereby appointed as legal guardians of the child BOM in the event the applicants are incapacitated or in any way unable to discharge their parental obligation.
 - c. The Registrar General is hereby directed to make the appropriate entries in the Adopted Children's Register.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 23RD DAY OF MARCH 2023

E K OGOLA

JUDGE

In the presence of:

Mr Odhiambo for the Applicants

Gisiele Muthoni Court Assistant

E K OGOLA J.

