



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re RK (Minor) (Adoption Cause E126 of 2021)  
[2023] KEHC 2608 (KLR) (Family) (2 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 2608 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**FAMILY**

**ADOPTION CAUSE E126 OF 2021**

**PM NYAUNDI, J**

**MARCH 2, 2023**

**IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2011**

**IN THE MATTER OF ADOPTION OF RK (MINOR)**

**AND**

**IN THE MATTER OF AN APPLICATION FOR ADOPTION**

**BY**

**IN THE MATTER OF**

**DMO ..... APPLICANT**

**JUDGMENT**

1. This is a Kinship adoption as the applicant is the paternal aunt to the RK, the subject minor whom she seeks to adopt vide the Originating Summons dated September 14, 2021. She is therefore a relative within the extended family of the child.
2. The Applicant is in a monogamous marriage with FA, and they currently reside in [Particulars Withheld] where they are both working. F is supportive and has consented to the adoption of RK by his wife, DMO who is the applicant.
3. The Couple has 3 other children, JO (born in 2009), LA (born in 2018) and ZA (born in 2020).
4. The Minor is an orphan, both her parents are deceased. Her father, ROO passed away on December 29, 2010, as per death certificate serial number xxxx. Her mother, EJK died on June 20, 2015 as per death certificate Serial No. xxxxx.
5. The first child of the applicant JO was born in 2009 while the Applicant was at the University. The minor was born on August 26, 2008 as per Birth Certificate Serial No. xxxx. Both the children were



raised by the maternal grandmother and view each other as siblings. The Applicant also took on the responsibility as a care giver for the child while she was at home with her mother.

6. The Applicant is currently an employee of the [particulars Withheld] and confirms that she has sufficient means to provide for the needs of the minor. Further if she adopts the minor, the minor will benefit from the medical cover and other benefits that her employer provides. The minor is currently in a boarding school in Kenya, but the Applicant and her husband would like for the Applicant to visit during the long holidays. In addition to her job at the [particulars Withheld], the applicant owns a house in [particulars Withheld], a car and land in Kenya.
7. The minor has been residing with her paternal grandmother, Ms RO. The grandmother is now well advanced in years and requires support in caring for the minor. The Applicant is currently fully responsible for the Child and the caregiver's upkeep and is desirous of bringing the child up in a stable family situation and also relieve her mother of the responsibility.
8. Prior to the hearing of the adoption application, the Change Trust prepared and filed a report dated August 6, 2021 and issued a certificate serial No. xxxx declaring the child free for adoption.  
  
The Court appointed a Guardian Ad litem BKL. The Guardian Ad Litem was present in Court and submitted a report that recommends that the Applicant be allowed to adopt the Child.
9. The Uncle to the Minor, OSA, who is the brother to the Applicant, was present in court and consented to the application by his Sister to adopt the minor.
10. An officer the Department of Children Services, Mary Atati conducted home visits and prepared a report dated September 7, 2022. The report established that the minor is an orphan and a niece to the applicant. That following the death of her parents the child has been under the care of her paternal relatives and particularly her paternal grandmother. The minor has 2 elder siblings, FA and BO (who is a step sibling). The biological brother FA has consented to the adoption vide his letter dated August 27, 2021. The report observed that the minor is at [particulars Withheld] Boarding School and currently in class 8.
11. The report recommended the child for adoption by the applicant noting that there is a clear bond between the Applicant and the minor. The Applicant was also found to have fulfilled all the legal requirements for adoption. There is also a letter from the Senior Chief of Lemelepo Location dated July 29, 2021, where the minor is currently residing with her paternal grandmother confirming that the minor is an orphan and the family has consented to the applicant adopting the minor.
12. This is a kinship adoption under Section 193 of the *Children Act*, 2022 and Annex Cat Page 153 of the guidelines for Alternative family care of Children in Kenya, 2014 which defines Kinship adoption as adoption of a child by a person who is a relative of the child.
13. After carefully assessing the records herein, I am satisfied that the applicants have fulfilled all the legal requirements relating to the Child's adoption. Section 186 of the *Children Act*, 2022 provides;
  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.

14. The Applicant is aged 35 years having been born on May 1, 1988. In accordance with Section 186 (3) she is the paternal Auntie of the minor.

The minor was present in court and consented to the Adoption. The paternal uncle of the minor was in court and has consented to the adoption.

15. Article 53 of the *Constitution of Kenya, 2010* provides the overarching principles which must apply whenever any decision concerning a child is to be considered.

It states:

A Child's Best interests are of paramount importance in every matter concerning the child

16. This principle is restated in Under Section 8 of the *Children Act, 2022* which provides;  
Best interests of the child.

(1) In all actions concerning children, whether undertaken by 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;
- b. the best interests of the child shall include, but shall not be limited to the considerations set out in the First Schedule.

Section 194 (1) (c) of the Act also requires that if the adoption order is made the order will be in the best interests of the child, having regard to the wishes of the child, depending on the child's age and understanding, and to the ability of the applicant to maintain and educate the child;

17. In view of the foregoing the court is of the considered view that it is in the child's best interest to be adopted by the Applicants.

Accordingly, I allow the prayers sought in the Originating Summons dated September 14, 2021 and order as follows:

- i. The Applicant DMO is allowed to adopt RK (the Child) who shall continue to be known as RK
- ii. The minor's date of Birth August 26, 2008
- iii. OSA of ID xxxx is hereby appointed as legal guardian of the Child, RK, in case of death or incapacitation of the Applicant. iv. The Registrar be and is hereby directed to enter this adoption into the Register of Adopted Children
- iv. The Director General of Immigration be and is hereby authorised to issue the minor RK with a passport.
- v. The Guardian Ad Litem is hereby discharged.

**SIGNED, DATED AND DELIVERED IN VIRTUAL COURT THIS 3RD DAY OF March, 2023.**



**P M NYAUNDI**

**JUDGE**

**In the presence of:**

**No Appearance by Parties**

**Karani** Court Assistant

