



REPUBLIC OF KENYA



**In re GNO (A Minor) (Adoption Cause E001 of 2022)  
[2023] KEHC 3432 (KLR) (20 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3432 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAMIRA  
ADOPTION CAUSE E001 OF 2022  
WA OKWANY, J  
APRIL 20, 2023  
IN THE MATTER OF THE CHILDREN'S ACT, 2001  
AND  
IN THE MATTER OF AN APPLICATION FOR THE ADOPTION OF GNO (A MINOR)  
  
IN THE MATTER OF  
MKN ..... APPLICANT**

**RULING**

1. The applicant herein MKN [full name withheld] lodged an originating summons dated March 2, 2023 seeking the following orders: -
  - a. That SMN and GWJ [full names withheld] be appointed as guardian ad litem of the minor GNO [full name withheld].
  - b. That Nyamira County Director of Children's Services evaluates her and files a report on her fitness to adopt GNO.
  - c. That the applicant be authorized to legally adopt GNO [full name withheld].
  - d. That COO and NNN [full names withheld] be appointed as the next of kin and legal guardians of the minor GNO.
  - e. That the minor be presumed to be a Kenyan citizen having been born by Kenyan and be issued with a Kenyan passport by the Director of Immigration Kenya.
  - f. That the Registrar General do make the appropriate entry of GNO the minor herein in the Adopted Children's Register in accordance with particulars as shall be set out in the adoption order.



2. The applicant swore an affidavit and statement in support of the Originating Summons wherein she averred that she is a Kenyan citizen and a resident in both Kenya and the United States of America where she intends to relocate the minor if her application is allowed. She attached a copy of her Kenyan passport which reveals that she was born on December 31, 1990. She also averred that the minor, GNO, is her niece being the daughter of her sister NNN [full name withheld] who is married to one COO [full name withheld]. She states that GNO is a Kenyan by birth and of African descent having been born on April 24, 2008. She attached copies of the minor's parents' national identity cards and the minor's birth certificate as annexures to the affidavit.
3. The applicant further states that she is married to one MII [full name withheld] with whom she has one child MKI [full name withheld] and that the said MII has no objection to the adoption application. She adds that her motivation to adopt the minor is to provide her with a good stable and conducive environment where she can grow to become a model member of the society and achieve her full potential. She further states that she is of good moral, social and financial standing and is therefore capable of fully caring, parenting and maintaining the minor should her application be successful.
4. The applicant attached the following documents to her supporting affidavit as exhibits: -Exhibit "MKN 1" is a copy of the Applicant's family photos; Exhibit "MKN 2a, 2b and 2c" are copies of the Applicant's marriage certificate, Kenyan Identity Card of the Applicant's husband and birth certificate of the Applicant's child. Exhibit "MKN 3a, 3b and 3c" are copies of my Kenyan Identity Card, Passport and Certificate of Good Conduct. Exhibit "MKN 4a and 4b" are copies of proof of employment, income and economic stability for the Applicant and the Applicant's husband. Exhibit "MKN 5a and 5b" are copies of Recommendations and Referees for the Applicant. Exhibit "MKN 6" is a copy of Medical Particulars of the Applicant. Exhibit "MKN 7" is a copy of letter from the minor's grandmother. Exhibit "MKN 8" is a copy of certificate of declaring a child free for adoption by KKPI Adoption Society. Exhibit "MKN 9" are copies of money transfer forms by sendwave from the Applicant to the minor.
5. Prior to the hearing of the Originating Summons, this court directed the Nyamira County Children's Officer to file a comprehensive report on the applicant's suitability to adopt the minor. Thereafter, a report signed by Nyamira County Coordinator Children Services Mr. Sammy Korir, was filed in court on March 27, 2023.
6. The Children's Officer's report reveals that the applicant was born on 31<sup>st</sup> December 1990. She is married to one MMI with whom she has one daughter MKI aged 4 years. The report further reveals that the applicant is a staunch Christian and a registered nurse holding an Associate Degree in Nursing. She currently works as a nurse in the State of Massachusetts in the United States of America.
7. The children's officer interviewed the minor's biological parents NNN and COO who indicated that they have no objection to the adoption of their daughter by the applicant. The report also shows that GNO was declared free for adoption by the Kenya-to-Kenya Peace Initiative Adoption Society (KKPIAS) on October 27, 2021 vide a declaration certificate serial No. 736.
8. When the matter came up for hearing before me on April 13, 2023, the applicant and her husband MKI (PW1 and PW2) appeared in court and testified, on oath, on their intention/wish to adopt the minor.
9. The child's guardian ad litem SMN and GWJ (PW3 and PW4) also testified, under oath that they did not have any objection to the applicant's application to adopt the minor. They further stated that they understood their duty to ensure that the minor's rights are protected.
10. PW5, Rose Nyanchama Orina, a business lady and a Pastor, testified that she knew the applicant and the minor as her church members. She also testified that she knew PW3 and PW4 and that they are



people of good morals. She added that she did not have any objection to the appointment of PW3 and PW4 as the minor's guardian ad litem.

11. The minor's biological parents COO and NNN (PW6 and PW7) testified that they had voluntarily/freely given up their daughter (GNO) and that they are confident that the applicant will be able to take proper care of the minor. They confirmed that they did not object to the adoption application.
12. The minor GNO also appeared in court and testified that she knew the applicant as her aunt. She stated that she was happy with the adoption application because she had lived with the applicant in Nyamira and that she liked the applicant.
13. This court had the opportunity to see, observe and talk to the applicant, the minor and all the other witnesses in a bid to observe their demeanor. All the witnesses appeared truthful and committed to the adoption process. The minor was jovial and candid. I noted that the minor was looking forward to joining her aunt as the new adoptive parent. The adoptive parent is a young lady with no history of medical complications that can hinder her from giving the child, who is her own niece, quality education and upbringing.
14. The documents that were availed before the court show that the applicant has no past criminal record. The applicant has a stable income and a family home.
15. I am satisfied that the applicant can meet the minor's needs that may need financial input as shown in the bank documents/statements which reveal that she has been sending financial support to the minor.
16. The children's officer's report has given the applicant a clean bill of health, so to speak, in terms of her suitability as an adoptive parent
17. The Originating summons has been considered in the context of the law applicable to applications for adoption as provided for in the *Children Act*.
18. Section 158 of that *Act* which the applicants invoked states as follows:

“ 158.

Adoption applicants

- (1) An adoption order may be made upon the application of a sole applicant or jointly by two spouses where the applicant or at least one of the joint applicants —
  - (a) has attained the age of twenty-five years and is at least twenty-one years older than the child but has not attained the age of sixty-five years; or
  - (b) is a relative of the child; or
  - (c) is the mother or father of the child.
- (2) An adoption order shall not be made in favour of the following persons unless the court is satisfied that there are special circumstances that justify the making of an adoption order—
  - (a) A sole male applicant in respect of a female child;
  - (b) a sole female applicant in respect of a male child;



- (c) an applicant or joint applicants who has or both have attained the age of sixty-five years;
  - (d) a sole foreign female applicant.
- (3) An adoption order shall not be made if the applicant or, in the case of joint applicants, both or any of them—
- (a) is not of sound mind within the meaning of the *Mental Health Act* (Cap.248);
  - (b) has been charged and convicted by a court of competent jurisdiction for any of the offences set out in the Third Schedule to this Act or similar offences;
  - (c) is a homosexual;
  - (d) in the case of joint applicants, if they are not married to each other;
  - (e) is a sole foreign male applicant:

Provided that the court may refuse to make an adoption order in respect of any person or persons if it is satisfied for any reason that it would not be in the best interests of the welfare of the child to do so.

- (4) Subject to section 159 an adoption application shall be accompanied by the following written consents to the making of an adoption order in respect of any child—
- (a) the consent of every person who is a parent or guardian of the child or who is liable by virtue of any order or agreement to contribute to the maintenance of the child;
  - (b) in the case of a child born out of wedlock whose mother is a child, with the consent of the parents or guardian of the mother of the child;
  - (c) in the case of a child born out of wedlock whose father has acquired parental responsibility in respect of the child under the provisions of this Act, with the consent of the father;
  - (d) on the application of one of the spouses, with the consent of the other spouse;
  - (e) in the case of two spouses who are not Kenyan citizens and who are not resident in Kenya, with the consent of the court of competent jurisdiction or of a government authority situated in the country where both or one of the spouses is ordinarily resident, permitting the spouses to adopt a foreign child;
  - (f) in the case of a child who has attained the age of 14 years, with the consent of the child.”



19. Section 158 provides for the basic requirements in an application for an adoption order. The section also prescribes the circumstances under which an adoption order will be refused. Section 154(1) of the *Children Act* gives this court power to make an adoption order and provides:

“Subject to this Act, the High Court may upon an application made to it in the prescribed form make an order (in this Act referred to as “adoption order”) authorizing an applicant to adopt a child.”
20. Under Subsection (2) of the said section, the proceedings in respect of an application for adoption shall be heard and determined in chambers and that the identity of the child and the applicants shall always remain confidential. These proceedings were held virtually in utmost confidentiality.
21. It is also apparent that before the commencement of the adoption process the child was available for adoption. Section 157(1) of the Act is to the effect that any child who is resident within Kenya may be adopted irrespective of whether the child is a Kenyan citizen or was not born in Kenya. The available evidence on record points to the fact that GNO was born in Kenya and he was a resident of this country at the material time.
22. There is a proviso to section 157(1) which has to be taken into account; it states as follows:

“...no application for an adoption order, shall be made in respect of a child unless the child concerned has been in the continuous care and control of the applicant within the Republic for a period of three consecutive months preceding the filing of the application and both the child and the applicant or applicants, as the case may be evaluated and assessed by a registered adoption society in Kenya.”
23. As I have already noted in this judgment, both the child and the applicants have been assessed by a duly registered adoption society KKPIAS that declared the child free for adoption. It is to be noted that the applicant is not a stranger to the child as she is the child’s biological aunt. It therefore follows that the applicant’s application satisfies the proviso to section 157(1) as well.
24. Section 165(2)(c) of the *Children Act* sets 65 years as the maximum age beyond which a person cannot make an application for adoption. The applicant has demonstrated that she is way below 65 years as she was only 32 years as at the time the application was made. Accordingly, the applicant is an eligible adoptive parent as far as the requirement as to age is concerned.
25. Besides the age factor, Section 158(4) requires an application for adoption to be accompanied by a written consent of the parent, guardian or a person who is liable by virtue of any order or agreement to contribute to the maintenance of the child or parents or guardians of the mother of the child or the court. If the child has attained the age of 14 years, his or her consent is required. In the instant case, I note that all the requisite consents were filed in court as part of the documents in support of the application.
26. Section 159(3)(b) of the *Act* provides that no adoption order shall be made if the applicants or an applicant has been charged and convicted by a court of competent jurisdiction for any of the offences set out in the Third Schedule to this Act or similar offences. The applicant swore an affidavit and annexed search results stating that she has never been convicted of any offence or charged before a court of law and has never received or paid money for the child in issue for purposes of these proceedings. She has also not adopted any other child. I am of the view that the applicant herein has satisfied this court that she does not fall short of the requirements of this section in the sense that she has not been charged and convicted of any of the specified offences.



27. In the circumstances, I find and hold that the applicant MKN has not only complied with the legal requirements necessary for making of an adoption order but also understands the consequences of that order. I am satisfied that she fully understands her responsibilities.
28. For the foregoing reasons, I allow the Originating Summons dated January 19, 2023 in the following terms:
1. SMN and GWJ are hereby appointed as guardians ad litem of GNO (minor);
  2. The applicant MKN is authorized to adopt GNO.
  3. COO and NNN [full names withheld] are hereby appointed as the next of kin and legal guardians of the minor GNO.
  4. The Registrar General is hereby ordered to make the appropriate entries in the Adopted Children Register.
  5. A formal Adoption Order as required by the *Children Act* do issue.
29. Orders accordingly.

**SIGNED, DATED AND DELIVERED IN CHAMBERS AT NYAMIRA THIS 20<sup>TH</sup> DAY OF APRIL, 2023.**

**W.A. OKWANY**

**JUDGE**

