



**In re EN (Child) (Adoption Cause E199 of 2022)
[2023] KEHC 3272 (KLR) (Family) (14 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 3272 (KLR)

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

ADOPTION CAUSE E199 OF 2022

DKN MAGARE, J

APRIL 14, 2023

IN THE MATTER OF

BMM APPLICANT

JUDGMENT

1. The Applicant made an application to adopt a niece. The father of the Children JCM died as recorded in the death certificate entry No. [withheld]. The death occurred on 27/3/2023. I have seen the same person is indicated as the father of the minor herein as per the death certificate entry [withheld].
2. The Applicant who is the sister to the Child's late father. She is married to a Kenyan and resides in the United States. She is a Kenya National and citizen by birth.
3. KKPI adoption society issued the requisite certificates recommending the adoption. The brother, JMM indicated that he is willing to be a legal guardian.
4. I have perused the report by JN the guardian ad litem and it also recommend the adoption.
5. The Directorate of Children Services also recommends the adoption.
6. I am aware that there are imperatives that need to be met before the adoption is granted. The power of this court is circumscribed in section 183 of the [children.s act](#) . the section provides as follows: -
 - 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", 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.
7. This is a kinship adoption the prerequisites of section 184 of the children's act have fully been met the Applicant. The Applicant is not disqualified by dint of section 186(6) of the children's act from adopting. The section provides as doth: -
- The Court shall not make an adoption order in favour of an Applicant or joint Applicants if the Applicant or joint Applicants, or any of them—
- a) is of unsound mind within the meaning of the *Mental Health Act* (cap. 248);
 - (b) is incapable of exercising proper care and guardianship of a child;
 - (c) has been convicted by a Court of competent jurisdiction for any of the offences specified in the Third Schedule or similar offences;
 - (d) in the case of joint Applicants, if the Applicants are not married to each other;
 - (e) is a sole male Applicant except where the Applicant is a biological relative of the child; or
 - (f) is a foreign Applicant except where the Applicant is a biological relative of the child.
8. In this case, though the Applicant resides in the united states, she is the biological paternal aunt of the child. She is also a Kenyan national and citizen by birth.
9. I was able to talk to the minor who is 13 years old and school going. She confirmed to the satisfaction of the court that the Applicant pays her school fees. I note that the Applicant is a proper and fit person to adopt the niece.
10. The application is thus merit and is for allowing.

Determination

11. I therefore allow the originating summons dated 15/10/2022, in the following terms:-
- a. BMM be authorized to adopt EN who retains her original names EN.
 - b. JMM be appointed as the Legal guardian.
 - c. The guardian ad litem be discharged.



- d. The minor be allowed to emigrate to the United States.
- e. The Director of Immigration to issue the minor passport.
- f. The Registrar of births and deaths to issue a birth certificate.
- g. This file is sealed and closed.

**DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 14TH DAY OF APRIL, 2023.
JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

HON. MR. JUSTICE DENNIS KIZITO MAGARE

JUDGE OF THE HIGH COURT, MOMBASA

In the presence of:

Miss Abungu for the Applicant

Court Assistant - Steve/Firdaus

