



**In re PHK (Child) (Adoption Cause E172 of 2022)
[2023] KEHC 17625 (KLR) (Family) (15 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 17625 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E172 OF 2022
MA ODERO, J
MAY 15, 2023**

IN THE MATTER OF

FKS APPLICANT

JUDGMENT

1. Before this Court is the Originating Summons dated August 12, 2021 by which the Applicant FKS seeks the following orders:-
 - ' 1. That FKS holder of National Identity Card Number XXXX of Post Office Box Number XX, Migwani, Kitui County be authorized to adopt the following children in this cause:-
 - a. PHK - 4 Years
 2. That the Registrar General be directed to enter this adoption into the register of adoptions
 3. That the children shall be presumed to be Kenyan Citizens and be accorded all rights of Immigration that accrue to Kenyan Citizens'.
2. The application was supported by the Statement of even date sworn by the Applicant. The matter was canvassed by way of vive voce evidence on the virtual platform.
3. The Applicant is a single woman who has never been married and has no biological child of her own. She wishes to adopt her five (5) year old niece who was sadly orphaned following the death of both the child's parents within a space of only two weeks.
4. The Applicant confirm that she understands the legal implication of an adoption order. She undertakes to accord to the subject child all rights due to a biological child including the right to inherit.



Analysis and Determination

5. I have considered the application for adoption, the evidence adduced in support thereof as well as the various reports filed in court.
6. The prerequisites for before an adoption order can be made are set out in section 184 (1) (a) and (b) of the *Children's Act* 2022: -
 - ' (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.'
7. The subject child is a girl child who was born on April 20, 2019. The child is therefore, now aged five (5) years old and is above the six (6) week age limit provided for in law.
8. Child Welfare Society of Kenya (CWSK) which is a registered Adoption Agency have annexed to their reports the original copy of their Certificate Serial Number XXXX dated November 23, 2021 declaring the child Free For Adoption. I therefore, find that all the legal prerequisites for an adoption order have been met.
9. The duty of this court is to analyze the evidence on record in order to determine whether the Applicant is a suitable adoptive parent.
10. The Applicant is a citizen of Kenya as evidenced by the annexed copy of her National Identity Card. (Exhibit 6). The Applicant is a Kenyan Woman who has never been married and has no biological child of her own. She now wishes to adopt the subject child who is her niece being the daughter of the Applicant's late brother.
11. The Applicant told the court that following the death of her brother and his wife the child has been rendered an orphan. That she wishes to adopt the child in order to provide her with a stable home and to provide the Parental love that the child now lacks.
12. The Applicant who also resides in Tennessee USA, runs a farming business in Kenya. She also runs a hotel business in the USA. She has annexed copies of her bank statements for an account held with the Kenya Commercial Bank (Exhibit 7). The Applicant has also annexed a copy of the Title Deed for a house which she owns at Bandani Villas in Nairobi South C Estate. I am satisfied that the Applicant is financially secure and is in a position to provide for the needs of the subject child.
13. The Applicant is a Christian and intends to raise the child in the Christian Faith. She was examined by a doctor and was found to be physically and mentally fit.
14. The Applicant has annexed a copy of a Clearance Certificate issued to her by the Director of Criminal Investigations proving that she has no Criminal record.
15. The Applicant informed the court that the extended family are aware of and are all in support of her intention to adopt the child. All the Applicants siblings have signed an Affidavit dated May 25, 2021 consenting to the adoption of the child by the Applicant. In keeping with this family decision, the Applicant has already taken up responsibility for the education and upkeep of the child. The child now resides in the home owned by the Applicant in South C.



16. The Applicant has appointed her older sister GNM the legal Guardian for the child. The proposed legal guardian has signed a consent dated November 28, 2022 confirming her willingness to act as the legal Guardian for the child.
17. All in all, I am satisfied that the Applicant is a suitable adoptive parent.
18. The subject child who is a niece to the Applicant is an orphan. The child's father MKS passed away on September 4, 2020. A copy of the Death Certificate Serial Number xxxx appears as Annexure 2 to the Summons.
19. Sadly, enough barely weeks after losing her father the child's mother PNS also passed away on September 18, 2020. A copy of the mother Death Certificate Serial Number XXXX is annexed to the Summons (Exhibit 3).
20. In deciding upon any matter involving a child, courts are obliged to give priority to the best interests of the said child. Section 8 (1) of the Children Act 2022 provides:-
 - ' (8). (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;'
21. This is a child who was orphaned at a tender age. She is in need of a stable home and needs a Parental figure in her life. The applicant has stepped forward and wishes to adopt the child in order to provide her with a home.
22. This is a kinship Adoption which is provided for by Section 193 of the Children Act 2022. The child will remain within the same family unit and will maintain close contact with her blood relatives.
23. A home visit was conducted by the Children Officer. The Applicant owns a house in Nairobi South C where the child now lives under the care of an Aunt. The house is a four bed-roomed house within a secure gated community. The house has adequate space and facilities for the child. The home is close to social amenities like schools, shopping malls, hospital, church etc.
24. I was able to see the child online. She was a cheerful bubbly and healthy young girl who confidently answered questions put to her by the court. The child was clearly comfortable in her surroundings.
25. I have carefully perused the reports prepared by the Adoption Agency, the Guardian Ad Litem and the Director Children's Services. All three reports are positive and all recommend the adoption.
26. Finally, I find that this adoption serves the best interest of the subject child. I therefore, allow this application and make the following orders.
 1. The Applicant FKS is authorized to adopt the child known as PHK.
 2. Upon adoption the child will be known as PHK.
 3. The Registrar General is directed to make the relevant entry in the Adopted Children's Register.
 4. GNN is appointed as the Legal Guardian for the child.

DATED IN NAIROBI THIS 15TH DAY OF MAY, 2023.

.....
MAUREEN A. ODERO
JUDGE

