



REPUBLIC OF KENYA



**In re MJC (Minor) (Adoption Cause E026 of 2023)
[2023] KEHC 18363 (KLR) (Family) (12 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 18363 (KLR)

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

FAMILY

ADOPTION CAUSE E026 OF 2023

PM NYAUNDI, J

MAY 12, 2023

IN THE MATTER OF THE CHILDREN'S ACT, 2022

AND

IN THE MATTER OF MJC (A MINOR)

AND

IN THE MATTER OF AN APPLICATION FOR KINSHIP ADOPTION

IN THE MATTER OF

HAA APPLICANT

JUDGMENT

1. This is a Kinship adoption as the applicant is the maternal aunt to the said MJC the subject minor whom she seeks to adopt vide the Originating Summons dated 28th day of February 2023. She is therefore a relative within the extended family of the child.
2. PW1 The Applicant is a dual citizen of Kenya and Sweden. She currently resides in Bastad, Sweden with her partner HJE . The partner has presented a written approval of the adoption.
3. The Applicant has a daughter called BK born on August 18, 2003. vide letter dated February 13, 2023 she has given her consent to the adoption. She has known the minor since he was born and considers him a brother. He has been a constant in her life.
4. PW3 The Minor was born on August 9, 2005. He currently resides with his mother GAA in Nairobi. He has given his consent to the adoption. He is very close to his Aunt.



5. The Applicant and her partner confirm that they have the financial resources to provide for the minors needs. The Applicant confirmed that she is currently providing for the needs of the minor and has done so over the years.
6. PW2 GAA is the biological mother of the minor and sister to the Applicant. She has consented to the adoption. The minor's biological father is not in touch with her or the minor. She confirmed that the Applicant has supported the minor from the word go providing for his financial and emotional needs. The adoption will enable the minor access greater opportunities. The minor visits the Applicant in Sweden annually
7. PW4-PNK is the Guardian *Ad Litem*. Following her appointment as guardian she undertook a home visit and interviewed the Applicant. She submitted her report dated April 11, 2023 in which she recommends the adoption.
8. PW5 Winfred Ikinya, she is an Assistant Director at the Directorate of Children Services. She presented to court report dated April 19, 2023 prepared by her colleague Ezekiel Kimani. The report recommends the adoption.
9. PW6 PAA is the proposed legal guardian she resides in Kisumu. She is a sister to the Applicant and the mother of the minor. She has signed a consent recommending the adoption. She has consented to acting as Legal Guardian and understands her obligations and the commitment she is making to take over the care of the minor in the event that the Applicant is unable to fulfil her obligation.
10. Prior to the hearing of the adoption application, the KKPI Adoption Society prepared and filed a report confirming that the Applicant is eligible to adopt and confirming that the Child was available for adoption.
11. This is a kinship adoption under Section 193 of the [Children Act, 2022](#) and Annex C, at 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.
12. 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."
13. The Applicant is aged 36 years having been born on May 10, 1987. In accordance with Section 186 (3) she is the maternal Auntie of the minor. The minor was present in court and consented to the



Adoption. The maternal Auntie and biological mother of the minor were in court and has consented to the adoption.

14. 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"

15. 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;"

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

- i. The Applicant HAA is allowed to adopt MJC (the minor) who shall continue to be known as MJC
- ii. The minor's date of Birth August 9, 2005
- iii. PAO is hereby appointed as legal guardian of the minor, MJC , 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
- v. The Guardian *Ad Litem* is hereby discharged.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 12TH DAY OF MAY, 2023.

.....

P M NYAUNDI

HIGH COURT JUDGE

In the presence of;

No Appearance by Parties

