



REPUBLIC OF KENYA



**In re NM (Minor) (Adoption Cause E182 of 2022)
[2023] KEHC 17461 (KLR) (Family) (9 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 17461 (KLR)

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

FAMILY

ADOPTION CAUSE E182 OF 2022

RL KORIR, J

MAY 9, 2023

IN THE MATTER OF NM (MINOR)

IN THE MATTER OF

SPG 1ST APPLICANT

FAF 2ND APPLICANT

JUDGMENT

1. The originating summons before me dated September 17, 2022 seeks the following orders: -
 - i. That the applicants SPG and FAF , be allowed to adopt the child currently identified as NM .
 - ii. That henceforth, the child be renamed as HS .
 - iii. That TAA be appointed as legal guardian of the child, in the event that the applicants herein are incapacitated or in any way unable to discharge their parental obligations.
 - iv. That the guardian *ad litem* be discharged.
 - v. That the Registrar General be directed to make the appropriate entries in the adopted children's register.
 - vi. That this court do issue such further orders as are in the interest of justice.
2. The summons is supported by the joint statement of the applicants dated September 17, 2022 and their joint affidavit sworn of even date.
3. The applicants are married as evidenced by their Mushim marriage certificate issued on February 14, 2022. The minor was the biological child of the 2nd applicant MSH (now deceased) and was born on



April 22, 2005 as evidenced by the birth certificate serial No xxxx issued on March 9, 2006 annexed to the application.

4. The application was canvassed before me on April 13, 2023 when the applicant appeared together with the minor on the court's virtual platform.
5. The 2nd applicant, FAF (W1) testified that she was 39 years old and married to the 1st applicant. That the minor NM (now aged 15) was her biological child and that NM'S father M passed away and she now wished her present husband S to adopt him.
6. SG (W2) testified that he was married to the 2nd applicant and wished to formally adopt NM, whom her described as his baby. He said that he was 54 and had a biological daughter aged 11 who lived with her mother in Kenya and that both the minor and her brother had embraced his other child.
7. The minor NM told the court that she was 14 years old and that they loved their father very much and that she wanted him (1st applicant) to be her father.
8. The guardian ad litem JN (W4) told the court that he had done his investigation and filed his report dated March 13, 2023 and that he recommended the adoption. MK (W5) told the court that they did home assessment and filed their report recommending the adoption.
9. The proposed legal guardian TA (W6) stated that the 2nd applicant was his sister and he understood his responsibilities.
10. The applicants counsel Ms K drew the attention of the report by the children's department on record.

Analysis And Determination

11. The governing law in this application is the Constitution and the Children's Act 2022. Article 53 (2) of the Constitution which provides: -

A child's best interest are of paramount importance in every matter concerning the child.

12. 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;” (own emphasis)

13. Section 184(1) of the Children's Act 2022 provides as follows: -

“(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.”

14. I have carefully considered the application the evidence adduced and the reports filed.



15. With respect to the minor, she is now aged 15 and is the biological child of the 2nd applicant. Her birth certificate has been displayed. The 2nd applicant being the mother has given her consent for the 1st applicant to adopt as required. The child herself being 15 has given his consent to the adoption. Buckner Kenya Adoption Services, an Adoption Society made a report declaring the child free for adoption and issued the certificate thereof serial No xxx dated September 9, 2022. It has been proved that the biological father of the child is now deceased. The death certificate No xxxx issued on July 2, 2009 is annexed to the application.
16. I am therefore satisfied from the evidence laid out above that the minor was free for adoption.
17. With respect to the applicants, the various reports have recommended them as suitable adoptive parents. For the 2nd applicant, she is the biological mother and therefore no issue arises. For the 1st applicant, he has been married to the 2nd applicant since February 14, 2022 and it was evident from the reports that the children of the 2nd applicant NM and had bonded well with him and called him dad. The minor told the court that the 1st applicant provides for them and loves them.
18. I therefore find the 1st applicant fit to adopt the child.
19. I further find that the adoption being a kinship adoption was in the best interest of the child as the applicants were already married to each other.
20. In the end, I grant the following orders: -
 - i. The applicants SPG and FAF , are authorized to adopt the child currently identified as NM .
 - ii. Henceforth, the child be renamed as HS .
 - iii. TAA is hereby appointed as legal guardian of the child, in the event that the applicants herein are incapacitated or in any way unable to discharge their parental obligations.
 - iv. The guardian *ad litem* is hereby discharged.

Orders accordingly

JUDGEMENT DELIVERED, DATED AND SIGNED AT BOMET THIS 9TH DAY OF MAY, 2023

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R. LAGAT-KORIR

JUDGE

Judgment delivered in the presence of the Applicants, Ms. Kimenyi for Applicants and Siele (Court Assistant)

