



**In re ZCA (A Child) (Adoption Cause E007 of 2023)
[2023] KEHC 18869 (KLR) (14 June 2023) (Judgment)**

Neutral citation: [2023] KEHC 18869 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
ADOPTION CAUSE E007 OF 2023**

G MUTAI, J

JUNE 14, 2023

**IN THE MATTER OF AN APPLICATION FOR ORDERS OF
ADOPTION OF ZCA- ACHILD - BY ARO – APPLICANT**

BETWEEN

BETWEEN

ARO APPLICANT

AND

LITTLE ANGELS NETWORK RESPONDENT

JUDGMENT

1. The applicant herein moved this honourable court vide originating summons dated May 8, 2023 seeking orders that: -
 - a. The applicant, ARO be authorized to adopt ZCA, a child;
 - b. Upon the making of the adoption order, the child be known as ZCA;
 - c. Upon the making of the adoption order MA and EA be appointed as legal guardians of the child as provided for by the provisions of Section 195 of the *Children Act, 2022*;
 - d. Upon the making of the adoption order, the Registrar General do make an entry recording the adoption in the Adopted Children Register as provided for by section 201 of the *Children Act, 2022*; and
 - e. The costs of this application be in the cause.

2. The application is supported by the averments in the statement in support thereof sworn on May 8, 2023. The applicant is an adult Kenyan citizen born in 1956 with a Permanent Canadian Resident Permit and currently working in Toronto Canada. She is a divorcee blessed with four children namely



SYK born in 1975, SYK born in 1977, CAM born in 1982 and RRM. The motivation to adopt the child has been ignited by the desire to give the child more opportunities in terms of education and employment as well as a better quality of life. Regarding her occupation, the applicant is a businesswoman, a retiree and a crossing guard working with [Particulars Withheld] Canada.

3. The child estimated was born on June 30, 2008. Her parents are FTT and CAM. Her mother FTT died on January 21, 2013 when she was five years old. She was left with her father, who then left her with his mother (the applicant herein) as he was not financially stable. The child has since then been under the care of the applicant. The applicant was granted guardianship orders over her on March 8, 2018 vide Guardianship Case No 6 of 2018. The father gave up the child for adoption vide certificate of acknowledgement and consent signed with the Little Angels Network Programme Officer on January 24, 2023.
4. Consequently, in its meeting held on March 1, 2023, the Case Committee of Little Angels Network declared the child free for adoption and a Certificate Serial No 002328 was issued.
5. Upon instituting these proceedings, NNF was on May 25, 2023 appointed a guardian-ad-litem. The County Director of Children Services through the Children Department, Mombasa and the guardian ad litem were directed to file their respective social inquiry reports within 14 days.
6. Preceding the hearing, the Director Children Services through the County Children Coordinator Mombasa County filed report dated June 9, 2023 recommending the adoption. The guardian-*ad-litem* on her part filed her report dated June 8, 2023 recommending the adoption.
7. During the hearing the applicant urged the court to allow the application to enable her adopt the child and stated that she understood the consequences of adoption and that it is permanent.
8. The applicant through her advocates P A Osino & Company Advocates filed written submissions dated June 12, 2023. Counsel submitted that this being a children matter, the overriding interest is the welfare of the child as provided for in Article 53(2) of the Constitution, Section 8 of the Children's Act 2022 and the First Schedule of the Children Act, 2022.
9. On the age of the applicant counsel relied on Section 186(3) of the Children's Act 2022 and submitted that the restrictions in Section 186(2) do not apply in this case.
10. I have considered the application herein, materials in support and evidence by various witnesses and the issues that emerge for determination are; whether the child is available for adoption, whether the applicant is fit to adopt the child and most importantly whether the adoption is in her best interest.
11. The child has been under the care of the applicant since her mother died. The father gave up the child for adoption vide Certificate of Acknowledgement and Consent signed with the Little Angels Network Programme Officer on January 24, 2023. He also gave his consent during the hearing on June 12, 2023. The child who is above ten years gave her consent to the adoption on June 12, 2023 before this honourable court when the matter came for hearing. It is therefore my finding that the applicant has complied with the provisions of the Children Act, 2022 Section 186(8) which states that:-

“Subject to the provisions of this section, an application for an adoption order in respect of a child shall be accompanied by written consents of the following persons—

- a. a parent or guardian of the child, or any person who is liable by virtue of any order or agreement to contribute to the maintenance of the child;
- b. on the application of one of the spouses, the consent of the other spouse; and



- c. in the case of a child who has attained the age of ten years, the child himself or herself.”
12. In terms of age the child is above 6 weeks and below 18 years which provision falls within the age bracket of any adoptive baby pursuant to Section 184 (1) (b) of the *Children Act*, 2022. Further Section 185 (1) does recognize any child who is resident in Kenya whether born in Kenya or not to be eligible for adoption. I have no doubt the child is fit for adoption.
13. Concerning the applicant’s suitability, she is a Kenyan citizen with a residence in Old Town within Mombasa County. She holds a Canadian Permanent Resident Permit No 63XXXXX25 as she is currently working in Toronto Canada and intends to continue residing in the two countries. The applicant being a grandmother to the child qualifies this adoption to be a kinship adoption. Section 2 of the *Children’s Act 2022* defines kinship adoption as, means the adoption of a child by a person who is a relative of the child. Further the court in the case of *In re JNA* [2018] eKLR stated:-
- “According to the Guidelines for Alternative Family Care of Children in Kenya page 153, “kinship adoption is adoption by adopters who are kin or relatives within the extended family of the child.” Kenyans living abroad and wishing to adopt a Kenyan child will adopt as Kenyans by way of domestic adoptions. This is therefore considered to be a local adoption.”
- She is aged 67 years which places her above the age bracket of not less than 25 years or more than 65 years for an adoptive parent in compliance with Section 186(2) of the Children’s Act 2022. However, the applicant is a grandmother of the child and the child has been under her care since she was 5 years thus qualifying her for the exemption in section 186(3) which provides that “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.”
14. Further the Director of Children Services through the County Children’s Coordinator Mombasa County, in the Social Inquiry Report dated June 9, 2023 recommended the adoption despite the age of the applicant by stating: -
- “Despite the applicant having surpassed the required age of 65 years and seeing as this is a kinship adoption, in the best interest of the child, this office recommends that orders granted in favour of this adoption application; that ARO be allowed to adopt ZCA.”
15. The applicant has been described as financially stable as she is employed as a cross guard in Canada with an income of Kes 175,384.50 monthly, a retiree with a pension of Kes 30,000.00 per month and also a businesswoman with properties in Mombasa. She has been described as caring, loving and Muslim lady with no criminal record. Since she started caring for the child, the child has fully bonded with her and is willing to move with her to Canada. She also understands the consequences of adoption and that it is permanent. She appreciates the role of a parent and is committed to treating Z like her biological child. Consequently, I have no doubt that she has met the necessary requirements to adopt the child.
16. On the question of whether the adoption is in the best interests of the child, I am guided by Article 53(2) of the *Constitution* and Section 8 of the *Children Act*, 2022 which underscores the best interests of a child principal as the primary consideration before making any decision concerning a child.
17. The child herein lost her mother at tender age and was given to her grandmother by her father to take care of her as he is financially unstable. The grandmother was appointed the legal guardian to the child on March 8, 2018 by the Tononoka Children’s Court vide Guardianship Case No 6 of 2018 with sole custody, care and control of the child. However, she has had shared custody of the child with the father



of the child who is her son. The child has been under the care of the applicant for 10 years, of her 15 years, thus it would be in the best interest of the child the adoption be allowed. I am guided by the case of *In re TT (Baby)* [2022] eKLR where the court stated: -

“After a careful assessment of the reports filed herein and noting that the child has been in the custody and care of both Applicants for about 13 of his 15 years, this Court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicants.”

18. Further she needs basic necessities like food, shelter, education and clothing. She has also fully integrated with the applicant. I am guided by the case *In re IK (Child)* [2020] eKLR where the court stated: -

“She needs parental care to grow up as a normal child with emotional and physical protection which the applicants have stepped in to offer. In that regard, the applicants meet the legal requirements for adoption. Further, all reports recommended adoption for the benefit and wellbeing of the child. As *the Constitution* and the law state, in all matters concerning a child, the best interests of the child are paramount.”

19. In allowing the application I am guided by the case of *In re JK* [2021] eKLR where the court stated: -

“In light of all the foregoing, the Court is of the view that the best interest of the child will be served by issuance of an order of her adoption to and by the applicants.”

20. Accordingly the Originating Summons is allowed with orders that:-

- a. The Applicant ARO is hereby authorised to adopt ZCA, a child;
- b. MA and EA are hereby appointed as Legal Guardians of ZCA in the event the applicant become deceased, is incapacitated or otherwise unavailable before ZCA attains the age of eighteen years;
- c. The REGISTRAR GENERAL is directed to make an entry recording the adoption order made herein in the Adopted Children Register;
- d. The guardian-ad-litem is hereby discharged; and
- e. No orders as to costs.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 14TH DAY OF JUNE 2023 VIA MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of:-

Ms. Osino for the Applicants;

Winnie Migot - Court Assistant

