



**In re LN alias LN (Child) (Adoption Cause E029 of 2022)
[2023] KEHC 19739 (KLR) (Family) (12 June 2023) (Judgment)**

Neutral citation: [2023] KEHC 19739 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E029 OF 2022
MA ODERO, J
JUNE 12, 2023**

IN THE MATTER OF

WMK 1ST APPLICANT

LWM 2ND APPLICANT

JUDGMENT

1. Before this court is the Originating Summons dated March 9, 2022 by which the Applicants William Mugane Kimani and Lucy Wanjira Mugane seeks the following orders:-

- “ 1. Spent.
- 2. Spent.
- 3. That the Applicants be authorized to adopt the child, Lewis Njuguna Alias Lewis Njuguna.
- 4. That the child Lewis Njuguna alias Lewis Njuguna to be henceforth known as Lewis Kimani Mugane.
- 5. That the child be presumed a Kenyan Citizen by birth.
- 6. That child’s date of birth be February 6, 2020 and the place of birth be Maragua S.C. Hospital
- 7. That the Registrar General be directed to enter the adoption in the Adopted Children Register.
- 8. That the Director Immigration be authorized to issue the child with a Kenyan passport.



9. That Zipporah Wanjiku Mwathi, the 1st Applicant's niece and her husband Stanley Njuguna Wanjiku be appointed the legal guardians of the child in event of the death or incapacity of the Applicants before the child is of age or independent or self-reliant.
10. That the court be pleased to make any further orders it deems necessary”
2. The Application was supported by the Affidavit of even date sworn by the Applicants. The matter was canvassed by way of vive voce evidence on the virtual platform.
3. The Applicants are a couple who have been married since the year 2001. They have no biological children together although the 1st Applicant has three (3) adult daughters from a previous marriage.
4. The couple now wish to adopt the subject child who is the nephew of the 2nd Applicant. The Applicants both confirm that they understand the legal implications of an adoption order. They undertake to accord to the subject child all rights which are 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 boy child who was born on February 6, 2020 at the Maragua S.C. Hospital. A copy of the child's Birth Certificate serial Number 4767175 is annexed to the summons (Annexure WLM'1'). The child is now aged three (3) years old and is above the Six (6) week age limit provided for in law.
8. Buckner Kenya Adoption Services which is a registered Adoption Agency have annexed to their report a copy of their certificate Serial Number 0517 dated November 30, 2021 declaring the child Free for Adoption (Annexure WLM'6').
9. The Applicants are a couple who got married in the year 2001. They solemnized their union on December 22, 2018 at St. Peters ACK Church in Kiambu County. A copy of their Marriage Certificate serial Number 303315 appears as (Annexure WLM'7') to the summons.
10. The Applicants union has not been blessed with any children. However the 1st Applicant has three (3) adult daughters from his first marriage. The 1st Applicant's first wife passed away as a result of a road accident in the year 1998.
11. The couple now wish to adopt the subject child who is the son of the 2nd Applicant's late sister Mary Wairimu Gitau. The child's mother passed away when the child was only three (3) weeks old. The biological father felt unable to care for such a small baby as he had four (4) other children to care for.



- The 2nd Applicant then stepped forward and took the motherless baby into her care. She has lived with the child in her home to date.
12. The Applicants are both in gainful business. They also own rental houses and engage in pig-farming. Annexed to the summons are copies of their Bank statement issued by Co-operative Bank of Kenya (Annexure WLM'10'). The couple also owns land in Uthiru, Kasarani and Nyahururu. I am satisfied that the Applicants are financially secure and are in a position to provide for the needs of the child.
 13. The Applicants are both Christians and intend to raise the child in the Christian faith. They have annexed to the summons a copy of a letter of recommendation dated January 28, 2021 written by Vicar Stephen Nga'ruku of ACK Uthiru Parish (Annexure WLM'9').
 14. The Applicants were both examined by a Doctor and were found to be physically and mentally fit. They have annexed copies of certificates of clearance issued to each by the Directorate of Criminal Investigations proving that neither has a criminal record (Annexure WLM'12').
 15. The Applicants told the court that their family members are aware of and support their intention to adopt the subject child. They have appointed the niece of the 1st Applicant and her husband as the legal Guardians for the child. The proposed legal guardians Zipporah Wanjiku Mwathi and Stanley Njuguna Wanjiku have both signed a letter of consent dated 26TH January 2021 (Annexure WLM'14') indicating their willingness to act as the legal guardians for the child.
 16. Section 186(8)(a) of the [Children Act 2022](#) provides as follows:-
 - “(8) 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.” [own emphasis]
 17. As stated earlier the biological mother of this child Mary Wairimu Gitau died on March 2, 2020. A copy of the Death Certificate Serial Number 1168165 is annexed at Page 18 of the summons.
 18. The child's biological father Peter Gitau Mburu gave evidence before this court. He confirmed that the child's mother passed away when the child was only three (3) weeks old. The father stated that he felt unable to take care of a baby who was still so small as also had four (4) other children to care for. He therefore handed over the baby to his late wife's sister (the 2nd Applicant) to care for him.
 19. The father told the court that the child has lived with the Applicant since he was a baby. He states that he voluntarily and wholeheartedly gives his consent to the adoption of the child by the Applicants. The Father has also written a letter giving his consent to the adoption (Annexure WLM'3').
 20. Additionally the siblings of the subject child have all written letter giving their consent to the adoption (Annexure WLM'4'). I am satisfied that the consent of the biological parent of the child has been sought and obtained as required by law.



21. 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) In all actions concerning children, whether undertaken by public or
(1) 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]
22. This is a child who lost his mother at a very early age. The child’s father was unable to care for him. The 2nd Applicant who is the child’s maternal Aunt stepped up and took the baby into her home. The child has lived with the Applicants since he was three (3) weeks old. This is the only home the child knows. I have no doubt that the child has bonded with the Applicants and views them as his parents.
23. I was able to see the child online. He was a healthy toddler who was obviously comfortable sitting on the lap of the 1st Applicant.
24. A Home visit was conducted on December 19, 2022. The Applicants live in their own home in Uthiru. The house is a three bed-roomed Mansionette within a secure compound. It is close to various social amenities like schools, shopping centres and churches. The home was found to be a conducive environment for raising a child.
25. I have perused the reports prepared by the Adoption Agency, the Guardian Ad Litem as well as the Director Children’s Services. All three reports were positive and all recommend the adoption.
26. Finally I am satisfied that this adoption serves the best interest of the child. I therefore allow this application and make the following orders:-
- 1) The Applicants William Mugane Kimani and Lucy Wanjira Mugane are authorized to adopt the child known as Lewis Njuguna alias Lewis Njuguna.
 - 2) Upon adoption the child will be known as Lewis Kimani Mugane.
 - 3) The Registrar General is directed to make the relevant entry in the Adopted Children’s Register.
 - 4) Zipporah Wanjiku Mwathi and Stanley Njuguna Wanjiku are appointed as the legal Guardians for the child.

DATED IN NAIROBI THIS 12TH DAY OF JUNE 2023.

MAUREEN A. ODERO

JUDGE

