



**In re RNS (Child) (Adoption Cause E204 of 2022)  
[2023] KEHC 21058 (KLR) (Family) (21 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 21058 (KLR)

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

**FAMILY**

**ADOPTION CAUSE E204 OF 2022**

**MA ODERO, J**

**JULY 21, 2023**

**IN THE MATTER OF CHILDREN’S ACT NO 8 OF 2001**

**AND**

**IN THE MATTER OF ADOPTION OF BABY RNS**

**IN THE MATTER OF**

**DKS ..... 1<sup>ST</sup> APPLICANT**

**DOS ..... 2<sup>ND</sup> APPLICANT**

**JUDGMENT**

1. Before this court is Amended Originating Summons dated June 27, 2023 by which the Applicants DKS and DOS seek the following orders: -
  1. That the mother of baby RNS, RON (deceased) died on the 30<sup>th</sup> day of June, 2021 and to date the child has remained in the sole custody of DKS.
  2. That the Applicants DKS and DOS be allowed to adopt baby RNS.
  3. That the Registrar General do make the appropriate entries in the Adopted Children’s Register in respect of the minor and further the Registrar of Births and Deaths do issue a Birth Certificate in respect thereof.”
2. The application was supported by the statement of even date sworn by the Applicants. The matter was canvassed by way of viva voce evidence on the virtual platform.
3. The Applicants are a couple who got married to each other in 2020. Their union has been blessed with two (2) biological daughters who are now aged 12 and 6 years old. They now wish to adopt the Subject Child who is a nephew to the 2<sup>nd</sup> Applicant.



4. The Applicants confirm that they both understand the legal implications of an adoption order. They undertake to accord to the Subject Child all rights due to a biological child including the right to inherit.

### **Analysis and Determination**

5. I have carefully considered this application for adoption, the evidence adduced in support thereof as well as the various reports in court. The prerequisites which must be met before an adoption order can be made are set out in Section 184 (1) (a) and (b) of the [Children Act, 2022](#) 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.”
6. The Subject Child was born on December 6, 2009. A copy of his birth certificate Serial Number xxxx is annexed to the summons (Annexure ‘DKS 1’) He is therefore now aged fifteen (15) years old and is well above the six (6) weeks age limit provided for in the law.
7. KKPI Adoption Society which is a registered adoption agency have annexed to their report a copy of their Certificate Serial Number xxx dated 23<sup>rd</sup> March 2022 declaring the child Free for Adoption. I am satisfied that the legal prerequisites for an adoption order have been met.
8. The duty of the court is to analyze the evidence on record to determine whether the Applicants are suitable adoptive parents. The Applicants are both Kenyan citizens as evidenced by the annexed copies of their National Identity Cards (Annexures ‘DOS ‘1’ and ‘DKS 1’).
9. The Applicants got married in the year 2020. Their union is blessed with two children, daughters who are now aged Twelve (12) and Six (6) years old. The couple now wish to adopt another child whom they have been taking care of since the demise of the child’s biological mother in the year 2012.
10. The Applicants are both in gainful employment. The 1<sup>st</sup> Applicant works in the USA as a [particulars Withheld] Assistant whilst the 2<sup>nd</sup> Applicant is a [particulars Withheld] County. The Applicants have annexed copies of their Bank Statements (Annexures ‘DS2’ and ‘DKS 6’). I am satisfied that the Applicants are financially stable and have the capacity to provide for the needs of the child.
11. The Applicants were both examined by a doctor and were found to be Physically and mentally fit. The 1<sup>st</sup> Applicant has annexed a copy of Clearance Certificate issued to her by the Directorate of Criminal Investigations (Annexure ‘DKS6’) proving that she has no criminal record.
12. The Applicants have appointed the brother of the 2<sup>nd</sup> Applicant as the legal guardian for the child. The proposed legal guardian BO has signed a letter of consent dated February 22, 2022 indicating his willingness to be appointed as legal guardian for the child.
13. The subject child is the nephew of the 2<sup>nd</sup> Applicant. The child’s biological mother RON was the sister of the 2<sup>nd</sup> Applicant. The child’s mother sadly passed on June 20, 2012. A copy of her Death Certificate Serial Number xxxx appears as Annexure ‘DKS8’ to the summons. The child’s father remains unknown.
14. Following the demise of the child’s biological mother the Applicants took him into their home and have raised him together with their own biological children. They now wish to formalize the child’s position in their family unit.



15. 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;” (own emphasis)
16. This is a child who was left alone following the demise of his mother in 2012. The Applicants stepped in and have provided the child with a stable and loving Home environment.
17. The child has lived with the Applicants for the past eleven (11) years. He considers the Applicants as his parents. Indeed this is the only family the child knows.
18. Section 186(8)(c) 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]
19. I was able to interview the child virtually. He confirmed that he knew the Applicants whom he referred to as his mother and father. The child confirmed that he was aware that the Applicants intended to adopt him and he gave his consent to the Adoption.
20. The child also wrote a letter (which is annexed to the summons) confirming that he wanted to be adopted by the Applicants. I am satisfied that the written consent of the child has been obtained in accordance with the law.
21. This is a kinship adoption which is provided for by Section 193 of the [Children Act](#). The child will remain in the same family unit and will retain contact with his blood relatives.
22. A Home visit was conducted by the Children’s officer. The child lives with the 1<sup>st</sup> Applicant in the family home in [particulars Withheld] Town.
23. I have considered the reports prepared by the Adoption Agency, the Guardian Ad Litem and the Director Children’s Services. All three reports were positive and all recommend the adoption.
24. Finally, I am satisfied that this adoption serves the interest of the subject child. I therefore allow this application and make the following orders:-
- 1) The Applicants DKS and DSO are authorized to adopt the child known as RNS.
  - 2) The Registrar-Genera is directed to make the relevant entry in the Adopted children’s Register.
  - 3) BON is appointed as the legal guardian for the child.

**DATED IN NAIROBI THIS 21<sup>ST</sup> DAY OF JULY, 2023.**

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**MAUREEN A. ODERO**  
**JUDGE**

