



**In re HR (Infant) (Adoption Cause E016 of 2023)  
[2023] KEHC 24863 (KLR) (Family) (6 October 2023) (Judgment)**

Neutral citation: [2023] KEHC 24863 (KLR)

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

**FAMILY**

**ADOPTION CAUSE E016 OF 2023**

**PM NYAUNDI, J**

**OCTOBER 6, 2023**

**IN THE MATTER OF ADOPTION OF HR, AN INFANT**

**AND**

**IN THE MATTER OF AN APPLICATION FOR ADOPTION**

**BY**

**IN THE MATTER OF**

**CAM ..... APPLICANT**

**JUDGMENT**

1. The Applicant, CAM *vide* Originating Summons dated 6<sup>th</sup> February 2023 has made an application for the adoption of HR, An Infant the child herein. The applicant is not married. She does have child of her own born in July 2023. She is driven by the desire to grow her family by extending her love to a needy child. She wants to offer the best to the child whom she has nurtured since she was a baby and also assist the child get good medical care for her condition.
2. The matter proceeded for hearing via *viva voce* evidence on the Teams virtual platform on the 28th of September 2023.
3. The Applicant is Kenyan Citizen who lives in France and of the Christian faith. She avers that she has the financial means and capability to take care of the Child. The applicant is English teacher and assistant nurse. She has had custody of the child since 4<sup>th</sup> August 2021. She resides in 26 Boulevard Marechai Foch Grenoble 38000 Grenoble, France and Acacia Valley Estate Ongota Rongai. She fully understands the consequences of an adoption order.
4. The child was born on 27<sup>th</sup> March 2021 at Kilingili Hospital. She was born out of an incestuous defilement of a daughter BW by her father AMM. The mother was 16 years then and therefore there



was a case defilement against the father which earned him 15 years of imprisonment. According to the luhya culture, that was a taboo child who could not be raised in the family. She was therefore handed over to Rehema Pefa Children's Home on 28<sup>th</sup> March 2021 for care and protection upon discharge from the hospital.

5. The child was formally committed to Rehema Pefa Children's Home by the Children's Court at Kakamega *vide* protection and care case number 11 of 2021 on 14<sup>th</sup> June 2021. The child's skin got very sensitive and the home environment at the children's home became uncondusive for her stay. She was therefore placed with the applicant on foster care on 4<sup>th</sup> August 2021 before she was freed for adoption to help manage her condition.
6. Prior to the hearing of the adoption application, KKPI Adoption Society prepared and filed a report dated 30<sup>th</sup> November 2022 and issued a certificate serial No. xxx declaring the child free for adoption. The Court appointed Guardian *ad litem* CWK.
7. CWK the Guardian *ad litem* was present in court, presented her report dated 15<sup>th</sup> May 2023. She confirmed to the court that she had visited the applicant's home. The child was well taken care of and the applicant bonded well with the child. She recommends the adoption.
8. An officer of the Department of Children Services, Mary Atati prepared a report dated 30<sup>th</sup> May 2023. The report was countersigned by Nancy Waswa. The report established that the child was born on 27<sup>th</sup> March 2021 at Kilingili Hospital. She was born out of an incestuous defilement of a daughter BW by her father AMM. The mother was 16 years then and therefore there was a case defilement against the father which earned him 15 years of imprisonment. According to the luhya culture, that was a taboo child who could not be raised in the family. She was therefore handed over to Rehema Pefa Children's Home on 28<sup>th</sup> March 2021 for care and protection upon discharge from the hospital.
9. Both the biological mother and father of the child had signed a consent statements dated 14<sup>th</sup> March 2022.
10. The report further documents that the child was formally committed to Rehema Pefa Children's Home by the Children's Court at Kakamega *vide* protection and care case number 11 of 2021 on 14<sup>th</sup> June 2021. The child's skin got very sensitive and the home environment at the children's home became uncondusive for her stay. She was therefore placed with the applicant on foster care on 4<sup>th</sup> August 2021 before she was freed for adoption to help manage her condition. The baby is doing well though her at the age of 8 months she started breaking her bones. After a long struggle by the applicant to understand her condition, she was diagnosed to be suffering from Osteogenesis Imperfection type Iv at Kijabe Children's hospital in June 2022. Her bones break easily but she is very strong jovial and intelligent girl. The condition needs urgent medical care and the prospective mother has plans to have her treated in France where she lives and work.
11. The proposed Legal Guardian MAO attended court and confirmed she is willing to take up the role of legal guardian. She is the applicant's sister.

After carefully assessing the records herein, I am satisfied that the applicant has fulfilled all the legal requirements relating to the Child's adoption. Section 186 of the [Children Act](#), 2022 provides. The court may make an adoption order on application by-

- (1)
  - (a) Sole applicant; or
  - (b) Two spouses jointly.



- (2) The court shall not make an adoption order in any case unless-
  - i. the applicant has attained the age of twenty-five years, but is not above the age of sixty-five years; and
  - ii. 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.

12. The Applicant is 42 years.

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.

13. This principle is restated Under Section 8 of the Children Act, 2022 which provides

Best interests of the child. In all actions concerning children, whether undertaken.

- (1) By public or private social welfare institutions, courts of the 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;

15. 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 Applicants.

16. Accordingly, I allow the prayers sought in the Originating Summons dated 6<sup>th</sup> February 2023 and order as follows:

- i. The Applicant CAM be allowed to adopt HR, an Infant.
- ii. The Child is to be known as GM.
- iii. The Child be presumed to be a Kenyan citizen by birth born on the 27<sup>th</sup> March 2021 at Kilingini Hospital
- iv. MAO is hereby appointed as legal guardians of Child
- v. The Registrar is hereby directed to enter this adoption into the Register of Adopted Children.
- vi. The Director Immigration is authorized to issue the child with a Kenyan passport
- vii. The Guardian *ad litem* is discharged.

**SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS...6<sup>th</sup> DAY OF October 2023.**



**P M NYAUNDI**  
**HIGH COURT JUDGE**

In the presence of;

Sylvia Court Assistant

