



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**In re DWO (Minor) (Adoption Cause E149 of 2024)
[2024] KEHC 14642 (KLR) (Family) (21 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14642 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E149 OF 2024
PM NYAUNDI, J
NOVEMBER 21, 2024
IN THE MATTER OF KINSHIP ADOPTION OF DWO (MINOR)**

IN THE MATTER OF

**AJNA 1ST APPLICANT
MAO 2ND APPLICANT**

JUDGMENT

1. Vide Originating Summons, dated 15th July, 2024 the Applicants herein seek the following orders, that:-
 - i. They be authorized to adopt the child
 - ii. The child be known as DWO
 - iii. The child be presumed to have been born in Kenya.
 - iv. SAO be appointed as the legal guardian of the child in the event of the death or incapacity of the Applicants before the child is of full age and fully self-reliant.
 - v. The Registrar General does make an entry of this adoption in the Adopted Children Register and issue a certificate to that affect.
 - vi. The Court be pleased to make any further orders it deem necessary.
2. The Applicants are Swedish and Kenyan Nationals respectively and currently resides in Orkelljunga, Sweden. They live together with their two sons, JO (16 years) and IMA (3 years). They got married in Siaya County on 22nd June, 2019 under Kenyan Law, marriage Certificate Serial Number 58110. AJNA works as a Line Manager at ESS Factory while MAO is a student studying early childhood education.



3. The Applicants affirmed that the minor is nephew to 2nd Applicant as he is the son of her late younger sister NAO hence this is a Kinship Adoption. They further affirmed that the minor is 10 years old and attends school at XXXX Primary School at Utanga in Siaya County. The Applicants have one child jointly who is 3 years old. The 2nd Applicants also has another child JO aged 16 years with whom they live with together in Sweden. They further stated that they understand the nature of an adoption and that the order is not reversible hence they will assume full parental responsibility for the child.
4. The Applicants stated that they have been paying the child's school fees, medical expenses and catering for his personal needs and welfare. They also averred that the child needs a close family where he can relate to and identify with a stable home, psychosocial support and it is in the best interest of the child that the Adoption Order be granted so that they can reside together with the child in Sweden.
5. The child herein (DWO) is the subject of the present adoption proceedings. The child was born on 10th December, 2013 at Rwambwa Hospital, Siaya County. The minor is the son of JOO and the late NAO.
6. According to statement in support, the child's mother passed on at an early age in 14th August, 2015 leaving the child at only 18 months old. It is said that the child was left under the care of 2nd Applicant's grandparents who later died. Currently the child lives with 2nd Applicant's maternal aunt in Uranga, Siaya and is currently in grade four at XXXX Primary School. It their statement that the child's biological father has never participated in any way in the child's upbringing and has another family where he is struggling financially therefore incapable of contributing to the care and maintenance of the child.
7. The child was present in Court and asserted that the 2nd Applicant is his maternal aunt and he refers to the 2nd Applicant as his mum. The minor asserted that he is understands and has consented to Adoption proceedings.
8. This being a Kinship adoption, the Applicants made legally necessary applications to the Adoptive Society to be allowed to adopt the child and meets the Kinship Adoption requirements.
9. Upon being taken through the relevant interviews by Buckner Kenya Adoption Services, they were found eligible and approval was made on 24th May, 2024 for adoption by the said Society, the minor was declared free for adoption by the same Adoption Society Vide a Certificate of Freeing Serial Number 0XX0. This is pursuant to Section 184 (1) (a) of the [Children Act](#) cap 141 of the Laws of Kenya.
10. On 25th July, 2024 this Court issued an order appointing Jedidah Njoki Muigai as the child's guardian ad litem, and further directing the guardian ad litem and the Director of Children's Services to investigate suitability of the Applicants and file their respective reports.
11. Pursuant to Section 102 of the [Children Act](#) 2022, before this matter came up for hearing, Damaris Kobonah Children's Officer, Milimani Children Court prepared and filed a report which was countersigned by Mary Atati Assistant Director of Children's Services on 20th August, 2024 in respect of the proposed adoption of the minor by Applicants. She observed that the minor is a partial orphan and has always stayed with her maternal grandparents who passed on last year.
12. The child has never stayed with his biological father and is currently staying with a sickly aged relative. She also noted from reports written by the in-laws' Applicants, that the family is united one and always consults each other before making any decision. They love and appreciate each other and the child has known them too well. They are a happy family and Don will be in good hands since he has lived with his aunt since 2015 when his mother died. She also averred that the Applicants are financially stable, medically and physically fits to take care of the minor hence recommended the Applicants be granted Adoption Orders.



13. JOO, the biological father to the child was present in Court. He confirmed that he has consented to the adoption and appreciates the implication of an adoption order and that he is aware that by giving his consent he has relinquished parental authority over the child.
14. The Applicants nominated SAO (their relative) as the legal guardian of the child herein. She further stated that this being a Kinship Adoption it will be in the best interest of the minor since the Applicants have met the legal requirements as provided by *Children Act 2022*.
15. SAO (the proposed Legal Guardian) was present in Court, she stated that she is a single lady without a child and she understands what it means to be a legal guardian and averred that she will assume parental responsibility of the minor in the event the parents are unable to.
16. Further, other Statutory Reports filed stated that the Applicants are financially and emotionally capable of providing the child with care, protection and education. They have no criminal record as evidenced by annexures (Exhibit 20A and 20B) dated 31st January, 2024. This Court has evaluated the facts of this adoption. This is a Kinship adoption.
17. The Children's Officer established that the Applicants have the financial and emotional capability to provide for the upkeep and education of the child and subsequently the Applicants understands well the contents of Right of Inheritance as stipulated under Section 17 of the *Children Act 2022*.
18. This Court observed the Applicants with the minor in Court and it was evident that the child has bonded well with the Applicants and being a Kinship Adoption, the Applicant has fulfilled all the legal requirements relative to the adoption of the child. This Court has satisfied itself that the Applicants are qualified and able to take care of the child.
19. After carefully assessing the records herein, the Court is satisfied that the Applicants have 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.
20. This Court is alive to the Jurisdiction of the High Court vide Article 165 Constitution of Kenya 2010 and Section 183(1) *Children Act 2022*. The Court is conscious of the law; Article 53 Constitution of Kenya 2010, Section 8 of *Children Act 2022* and the UN Convention on the Rights of the Child & African Charter on the Rights & Welfare of the Child all amplify on the best interests of the child.

Determination

21. On the basis of a careful examination of the documents presented before me as well as the observations made therein, this Court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicants.
22. Subsequently, I allow the prayers sought in the Originating Summons dated 15th July, 2024 and order as follows:
 - I. The Applicants AJNA and MAO are hereby allowed to adopt DWO



- II. His date of birth shall be 10th December, 2013 and Place of Birth Rwambwa District Hospital, Siaya County.
- III. He is presumed to be a citizen of Kenya by birth.
- IV. SAO shall be the Legal Guardian of the child.
- V. The Registrar General to enter this order in the Adoption Register.
- VI. The Director Immigration is authorised to issue the child with a Kenyan Passport.
- VII. The Guardian Ad litem is discharged.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY ON 21ST NOVEMBER, 2024.

P. NYAUNDI

JUDGE

In presence of: -

Fardosa Court Assistant

Ms Saru Advocate for Applicant

