



**In re QA (Adoption Cause 139 of 2024) [2024] KEHC 13878 (KLR)
(Family) (7 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 13878 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE 139 OF 2024**

BK NJOROGE, J

NOVEMBER 7, 2024

IN THE MATTER OF THE CHILDREN’S ACT NO. 8 OF 2021

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION OF QA

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION BY

IN THE MATTER OF

KOSK 1ST APPLICANT

MAO 2ND APPLICANT

JUDGMENT

1. This is an Adoption Application by KOSK the 1st Applicant and MAO 2nd Applicant. They jointly presented an Originating Summons dated 24th June, 2024. It is supported by the Statement of the Joint Applicants dated the 24th June, 2024 as well as the Affidavit of the Joint Applicants sworn on 24th June, 2024. It seeks the following orders;
 1. That AAO , of P.O. BOX 8281-00100 NAIROBI, in the Republic of Kenya be appointed Guardian Ad Litem.
 2. That the Director Children’s Department, Ministry of Labour, Social Security and Services investigate the Applicants’ fitness to adopt and file a report.
 3. That the Applicant be authorized to adopt QA to be known as QDK
 4. That the child be presumed a Kenyan Citizen by birth.



5. That the child's date of birth be 19th October, 2011 and the place of birth be Nairobi County.
 6. That the Registrar General be directed to enter this adoption in the Adopted Children Register.
 7. That the Director Immigration be authorized to issue the child with a Kenyan passport.
 8. That the 2nd Applicant's brother REOO and his wife SKM, be appointed the legal guardians of the child in the event of the death or incapacity of the Applicants before the child is of age or independent.
 9. That the Court be pleased to make any further orders it deems necessary.
2. At the preliminary hearing on 11th July, 2024 AAO was appointed as the Guardian Ad Litem and she subsequently filed the Guardian Ad Litem's Report dated 21st July, 2024.
 3. The Court also notes that the Director of Children Services has filed a Statutory Report dated 23rd July, 2024.
 4. This matter came up for hearing on 25th July, 2024. The 1st Applicant aged 44 years works as a Cyber Security Analyst at xxxxx at the State of New Jersey. The 2nd Applicant is aged 43 is a Business Lady.
 5. The Joint Applicants testified that they were married under the State of New Jersey Laws in the United States of America. This is a Christian marriage hence monogamous; A certificate of Marriage No. A001698xxxx SR 22-22 dated 27th May, 2022 is attached to the application.
 6. They expressed their desire to jointly adopt QA, whom they wish to name QA KUTE. The 2nd Applicant is the biological mother of the child while the 1st Applicant is the husband to the 2nd Applicant. They have been living together since their marriage on 13th May, 2022. They have been exercising parental responsibility over the child jointly. It is their wish that the 1st Applicant acquires legal parental responsibilities over the child.
 7. They understand the irrevocable nature and permanency of an adoption order. They are also aware of the rights of inheritance of the child. Specifically, the 1st Applicant is fully aware that he will acquire all parental rights over the child. In turn, the child has the rights of inheritance over his property. They have one biological child of the relationship, EJOK born on 4th July, 2017.
 8. The couple having married, it is only natural that the 1st Applicant becomes part of the 2nd Applicant's children. Hence the need to formalise the adoption process. The 1st Applicant resides at xxxx, South River in New Jersey, USA and the couple and the two children reside at xxxxx Apartments, Kileleshwa in Nairobi.
 9. The Child the subject matter of these proceedings is the first-born child of the 1st Applicant. She got this child out of relationship with one BOO. The relationship did not culminate in a marriage and BOO is said to have died of High Blood Pressure. This is as per information contained in a Certificate of Death No. 061xxxx dated 13th March, 2018. The child the subject matter of these proceedings was born to the 2nd Applicant on 19th October, 2011 as per the Certificate of Birth No. 71xxxx dated 27th December, 2012.
 10. Change trust issued a certificate declaring the child free for Adoption, Serial Number 00682 dated 28th May, 2024. This is pursuant to Section 184(1) (a) of the Children Act Cap 141 of the Laws of Kenya.
 11. The Joint Applicants were assessed by Change Trust an Adoption Society and approved by its case committee for Adoption on 28th May, 2024. The child lives with the Joint Applicants.



12. The Report of the Guardian Ad Litem AAO dated 21st July, 2024 favours the adoption. She noted that the Child has bonded well with the 1st Applicant. She appeared in Court virtually to present her Report.
13. The proposed Legal Guardians REOO and his wife SKM appeared in Court virtually. They are a brother and a sister-in-law to the 2nd Applicant. They confirmed that they have consented to being appointed the Legal Guardians and that they understood the effects of such an order.
14. Muteru Njama a representative of Change Trust also attended Court virtually to confirm that the adoption process met the requirements of the Law. The Society approves the adoption as being in the best interests of the child. He confirmed that a Certificate freeing up the Child for Adoption had been issued.
15. Finally, Winfred Ikinya the Assistant Principal Children Officer appeared in Court and adopted the Report dated 23rd July, 2024 prepared by Harriet Kihara And countersigned by Mary Atati for the Assistant Director Children’s Services. She recommended the adoption.
16. The Court observed the Joint Applicants as well as the Child during the hearing and noted that they have bonded well as a family. The child is 12 years old and understands the adoption process. She has given her consent to the adoption.
17. The Joint Applicants have demonstrated their financial capacity to take care of the child. They are in good health. They have no criminal records as witness their Police clearance Certificates Ref PCC-5AO5333 dated 9th June, 2023 (for 1st Applicant) and the Good Conduct Certificate issued by the Kingdom of Bahrain verification No. 2023014687 dated 26th June, 2023 (for 2nd Applicant). The 1st Applicant is Kenyan while the 2nd Applicant is British.
18. The Court has taken note of the Statutory Reports filed regarding this Adoption, all which favour the adoption.
19. The Court has considered all the facts presented in the adoption proceedings as well as evaluated the Reports and testimonies of all those parties who attended the virtual hearing on 25th July, 2024.
20. Pursuant to Section 186 of the *Children Act* Cap 141 of the Laws of Kenya the Court may make an Adoption Order’
 1.
 - “(a) Sole Applicant, or
 - (b) Two spouses jointly
 2. The Court shall not make an adoption order in any case under
 - 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-five years older than the child.
 3. The restrictions in Section (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.”
21. The Court is alive to its jurisdiction under Article 165 and 53 of the *Constitution* of Kenya and Section 183 (1) of the *Children Act*. The Court has considered Section 8 of the *Children Act*, the *United*



Nations Convention on the Rights of the Child and the African Charter on the Rights of the Welfare of the Child.

22. This is a kinship adoption pursuant to Section 193(1) of the *Children Act* Cap 141 of the Laws of Kenya. The guiding principle remains in the best interests of the child pursuant to Section 8 and 194 (1) (c) of the *Children Act* Cap 141 of the Laws of Kenya.
23. The Child is a Kenyan Citizen by birth.
24. The consent of the biological father is dispensed with as he is said to be deceased.
25. The orders sought are merited in the circumstances.
26. The Court is persuaded that the adoption will provide the Child with a safe, permanent home and loving environment and hence is in the best interests of the child.

Determination

27. The Court makes the following orders;
 - i. That the Applicant be authorized to adopt QA to be known as QDK
 - ii. That the child be presumed a Kenyan Citizen by birth.
 - iii. That the child's date of birth be 19th October, 2011 and the place of birth be Nairobi County.
 - iv. That the Registrar General be directed to enter this adoption in the Adopted Children Register.
 - v. That the Director Immigration be authorized to issue the child with a Kenyan passport.
 - vi. That the 2nd Applicant's brother REOO and his wife SKM, be appointed the legal guardians of the child in the event of the death or incapacity of the Applicants before the child is of age or independent.
 - vii. That the Guardian Ad Litem be and is hereby discharged.
28. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 7TH DAY OF NOVEMBER, 2024.

NJOROGE BENJAMIN. K

JUDGE

In the presence of: -

Mr Momanyi for the Applicants.

Court Assistant Luyai.

