



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KIAMBU**

**ADOPTION CASE NO. E003 OF 2021**

**IN THE MATTER OF THE CHILDREN'S ACT, 2001**

**AND**

**IN THE MATTER OF AN APPLICATION FOR AN ADOPTION ORDER IN RESPECT OF JNG (MINOR)**

**JUDGMENT**

1. **CNN** and **AMN**, the applicants seek inter alia an order to adopt the child JNG. The applicants are uncle and aunt to the child. The child is an orphan having lost his biological father on 10<sup>th</sup> February, 2019, through a road accident and his biological mother passed away on 17<sup>th</sup> June, 2002 through illness. The child has a sister who is an adult. The child was born on 7<sup>th</sup> March, 2005.
2. The applicants are Kenyan nationals residing in the United States of America. They began to provide and support the child on the death of his father. They are married to each other, they were married on 3<sup>rd</sup> February, 1996. They are blessed in that marriage, with two daughters. Their daughters have given written consent for this adoption. They have proved their financial capability to take care of the child.
3. The Buckner Kenya Adoption Services sat and deliberated on the applicant's application and they declared the child free for adoption. I have sighted the Certificate of Freeing a Child for Adoption.
4. The applicants have met all the legal requirements of adoption.
5. This indeed is a kinship adoption because the applicants are uncle and aunt of the child. The applicants desire the child to join and live with them in USA. That in my view does not contravene the moratorium issued by the Cabinet Secretary. This being a kinship adoption is indeed a domestic adoption. My holding is supported by two decided cases. One of those cases is ***In re R.N.W. (minor) (2019) eKLR*** thus:-

***“In Adoption Cause 75/2017, J.N.A. by Zoo and C.A.N. Achode, J held that:-***

***“According to the guidelines for alternative Family Care of Children in Kenya pg.153, kinship adoption is adoption by adopters who are kin or relatives within the extended family of the child. Kenyans living abroad and wishing to adopt a Kenyan child will adopt as Kenyans by way of domestic adoption. This is therefore considered to be a local adoption.”...***

***Having considered the above, authorities, I am persuaded to find that a kinship adoption is a domestic adoption to which this court has jurisdiction. The adoption application before me being a kinship adoption, this court has jurisdiction to hear it and will proceed to hear the Originating Summons. It is so ordered.”***

6. The second case is ***In re R.N.W. (minor) (2019) eKLR*** as follows:-

***“11. This is a Kinship Adoption as the applicant is related to the child since the child's biological mother was a cousin to the Applicant.***

***12. Lady Justice Achode In re J.N.A. [2018] eKLR held that:-***

***‘The indefinite moratorium issued by the Kenyan cabinet on 27th November, 2014 involved inter-country and resident adoptions of Kenyan children by foreigners. It does not affect adoptions by Kenya applicants, even those living abroad. Dual citizenship in our country is anchored in Article 16 of the Kenyan Constitution.***

**According to the Guidelines for Alternative Family Care of Children in Kenya page 153, “kinship adoption is adoption by adopters who are kin or relatives within the extended family of the child.” Kenyans living abroad and wishing to adopt a Kenyan child will adopt as Kenyans by way of domestic adoptions. This is therefore considered to be a local adoption.”**

7. I had the pleasant time conversing with the child. I was caught up by his enthusiasm in joining his new family. I have noted that the child’s adult sister has given her consent to this adoption. I have noted the very positive reference in support of the applicant’s adoption of the child.

8. The report by the court’s appointed guardian ad litem is very informative of the wider family of the applicants and the child and it was positive towards this adoption, it is worth repeating some of the words in that report, as follows:-

**“My feeling is that the child is going into a very warm and loving family, who already know him, and are willing to love, provide and protect him.”**

9. In the end, I allow the Originating Summons dated 15<sup>th</sup> March, 2021 in the following terms:-

(a) The applicants **CNN and AMN** are hereby authorized to adopt the child currently identified as **JNG**.

(b) **ENN and FNG** are hereby appointed as joint legal guardians of the child **JNG** in the event the applicants are incapacitated or in any way unable to discharge their parental obligation.

(c) The guardian ad litem is accordingly discharged.

(d) The Registrar General is hereby directed to make the appropriate entries in the adopted Children’s Register.

Orders accordingly.

**JUDGMENT DATED and DELIVERED at KIAMBU this 6<sup>TH</sup> day of JULY, 2021.**

**MARY KASANGO**

**JUDGE**

Coram:

Court Assistant ... Ndege

Applicant : .....

**COURT**

Judgment delivered virtually.

**MARY KASANGO**

**JUDGE**