



In re Adoption of MMO, AMO, RMO & HMO (Adoption Cause E003 of 2024) [2025] KEHC 5262 (KLR) (26 March 2025) (Judgment)

Neutral citation: [2025] KEHC 5262 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
ADOPTION CAUSE E003 OF 2024
G MUTAI, J
MARCH 26, 2025
IN THE MATTER OF THE CHILDREN ACT, 2022
AND
IN THE MATTER OF:-
1. MMO (MALE, 17 YEARS, 4 MONTHS);
2. AMO (MALE, 15 YEARS, 11 MONTHS);
3. RMO (FEMALE, 14 YEARS, 9 MONTHS); AND
4. HMO (MALE, 12 YEARS, 4 MONTHS)
AND
IN THE MATTER OF AN APPLICATION FOR ORDERS OF ADOPTION OF:-
1. MMO (MALE, 17 YEARS, 4 MONTHS);
2. AMO (MALE, 15 YEARS, 11 MONTHS);
3. RMO (FEMALE, 14 YEARS, 9 MONTHS); AND
4. HMO (MALE, 12 YEARS, 4 MONTHS)
BY DR. MO & DR. FA' R'
(HEREINAFTER THE "JOINT APPLICANTS")**

BETWEEN

**DR MAO 1ST APPLICANT
DR FAR 2ND APPLICANT**

AND

HIO RESPONDENT



JUDGMENT

1. Vide an Originating Summons dated 30th January 2024, the Joint Applicants sought the following orders:-
 1. Pursuant to Article 14(1) of *the Constitution* of Kenya (2010) and Section 11 of the *Children Act* (2022), this Honourable Court be pleased to declare: (A) MMO (Male, 17 Years, 4 Months); (B) AMO (Male, 15 Years, 11 Months); (C) RMO (Female, 14 Years, 9 Months); and (D) HMO (Male, 12 Years, 4 Months); (hereinafter Together the “Children”), which Children are Citizens of Kenya by Descent, by way of both their Biological Parents And which Children are currently Domiciled in Moyale in Kenya, to be Citizens of Kenya by Descent;
 2. Pursuant to the provisions of Section 186(8)(a) of The *Children Act* (2022), Consents to the Adoption of the Children have been duly signed by AAH (the Biological Mother of the children) and HIO (the Paternal Grandmother of the Children and current Guardian) and witnessed, and the same are annexed to the Statement In Support of an Adoption Application filed together with this Originating Summons, and are there marked “AAH-3 and “HIO-3”;
 3. Pursuant to the provisions of Section 186(8)(c) of The *Children Act* (2022), Consents to the Adoption of the Children have been duly signed by each of the Children and witnessed And the same are annexed hereto marked as follows: a) Consent by MMO marked “MAO-1”; b) Consent by AMO marked “AMO-1”; c) Consent by RMO marked “RMO-1”; AND d) Consent by HMO marked “HMO-1”;
 4. The Joint Applicants herein, namely DR. MAO and DR. FAR, be authorised to Adopt the aforementioned Children, namely: (A) MMO (Male, 17 Years, 4 Months); (B) AMO (Male, 15 Years, 11 Months); (C) RMO (Female, 14 Years, 9 Months); AND (D) HMO (Male, 12 Years, 4 Months);
 5. Upon the Making of the Adoption Order, the Children are to retain their current names as set out in paragraph one (1) hereabove;
 6. Upon the making of the Adoption Order, the Joint Applicants herein, namely DR. MAO and Dr. FAR be appointed as the Adopters of the Children as provided for by the Provisions of Section 2(b), Section 183(1), Section 183(4)(a), Section 183(4)(c)(iv), Section 191 as read with 192(c), Section 193 And Section 194 of The *Children Act* (2022);
 7. Upon the making of the Adoption Order, The Registrar General does make an entry recording the Adoption and retain a record(s) of the date(s) of birth of the Children as are set out in paragraph one (1) hereabove in the Adopted Children Register as provided for by Section 201 of The *Children Act* (2022); and
 8. The Costs of this application are costs in the cause.
2. In the statement in Support of the Adoption Application, the joint applicants averred that they were both United States nationals born and brought up in Kenya and engaged in the practice of medicine. They reside in Yala Township, Siaya County, in Kenya, and Fairfield, California, in the United States of America. The two got married to each other on 23rd May 2007 in Sacramento, California and have four biological issues; Maryam O (born 20th August 2005), SO (born 12th April 2010), Adam O (born 23rd July 2017), and ZO born 23rd July 2017.
3. The Joint Applicants propose to adopt MMO, AMO, RMO, and HMO. The four children are nieces or nephews of the 1st applicant, making this adoption a kinship adoption. They are all Kenyans of the



African race. The four proposed adoptive children are the issues of AAH and MOA, a deceased person who died on 8th January 2012. The deceased was the brother of the first applicant. Upon the demise of her husband, Ms A left the children with their grandmother and procured another marriage. The grandmother is HIO, a resident of Biashara Sub Location, Gurumesa Location, Moyale Sub County, Marsabit County.

4. The Joint applicants propose to adopt the children who reside with the grandmother and to educate them. The biological mother has consented to the proposed adoption, as has the grandmother, who has custody of the children.
5. The applicants are of the Islamic faith. They intend to bring up the children as Muslims if the adoption application is allowed. They have the financial means to take care of the said children. The joint applicants averred that they have no criminal record and are physically and emotionally fit and competent to take care of them. The proposed adoption has the support of the family members.
6. The 4 children are aged between 12 and 17 years. They are, as has been stated children of the brother of the 1st applicant. They reside with their paternal grandmother at Moyale in Marsabit County.
7. On 9th May 2024, this Court appointed AOF of Lavington Nairobi as the guardian ad litem, in respect of these adoption proceedings. He was directed to file and serve the requisite report within 30 days. The Director of Children's Service Mombasa was also directed to conduct a social enquiry and to prepare and file the requisite report within 30 days.
8. The matter was heard on 2nd and 9th July 2024. I shall set out briefly the evidence of the witness below.
9. The first witness was Dr MAO. He testified that he is a doctor practising emergency medicine in California. Dr O studied in Kenya at the [Particulars Withheld] High School and graduated with a degree in Medicine from [Particulars Withheld] University. He has been practising medicine since 2004. He testified that the four children are the issue of his brother. He wishes, together with his wife, to adopt the children, who have been under the care of his mother since his brother died. He stated that he wished to adopt the children and averred that he knew adoption was permanent and irreversible. It was also his evidence that he had the means to take care of the children.
10. The guardian ad litem, AOF, was the second witness. He testified that he assessed the suitability of the joint applicants and wrote the requisite report. In his view, the joint applicants have the capacity to take care of the children. They have the financial ability as well as moral suitability to do so. He submitted his report, vide which he recommended the adoption.
11. The third witness was HIO. The said person is the mother of the first applicant. She stated that she had been taking care of the children and that she had no objection to the adoption of the said children by the joint applicants as they had been assisting her to do so.
12. The fourth witness was AAH. Ms A is the biological mother of the children. She testified that after her husband died, the four children were left with their paternal grandmother. She has since remarried and has a family of her own. He was categorical that she had no objection to the children being adopted by the joint applicants.
13. The Court interviewed the four children, MMO, AMO, RMO and HMO. The said children understood the purpose of the hearing and freely consented to the adoption.
14. In addition to the foregoing, the Court received reports from the Directorate of Children Service Moyale and Siaya, all of which recommended the adoption as it would be in the best interest of the children.



15. I have considered the application herein, materials in support, and evidence by various witnesses. The issues that emerge for determination are whether the children are available for adoption, whether the joint applicants are fit to adopt the children, and most importantly, whether the adoption is in the best interest of the said children.
16. From the evidence, it is clear that MMO, AMO, RMO, and HMO are the biological children of AAH and MOA, a deceased person who died on 8th January 2012. Their father was the brother of the first joint applicant. Upon the demise of her husband, AAH relocated to Ethiopia and remarried. The children have been under the care of their grandmother. Their said grandmother is supported materially by the joint applicants. From the evidence adduced, the proposed adoption enjoys the support of the extended family.
17. Since the male parent is deceased, the female parent has consented to the adoption, and also, as this is a kinship adoption, the consent of the biological father is hereby dispensed with.
18. The four proposed adoptive children are the issues of AAH and MOA, a deceased person who died on 8th January 2012. The biological parents were Kenyan citizens and resided in Kenya. Article 14(1) of *the Constitution* of Kenya, 2010 provides that a person is a citizen by birth if on the day of the person's birth, whether or not the person is born in Kenya, either the mother or father of the person is a citizen. The children were born in Kenya, and their biological father and mother are Kenyans; thus, in view of this provision, the children herein are presumed to be Kenyan citizens by birth.
19. The said children are above 6 weeks and below 18 years which provision falls within the age bracket of any adoptive baby pursuant to Section 184(1) (b) of The Children's Act 2022. Further, Section 185(1) recognizes any child who is a resident of Kenya, whether born in Kenya or not, as eligible for adoption. I have no doubt that the children are fit for adoption.
20. Concerning the joint applicants' suitability, they are dual nationalities of Kenya and the United States of America and have a home in Siaya County, thus qualifying this as local adoption. The 1st applicant is 53 years old, while the 2nd applicant is 54 years old, which places them in the age bracket of not less than 25 years or more than 65 years for an adoptive parent in compliance with Section 186(2) (a) of the Children's Act. The joint applicants have been described as financially stable, as indicated in the Director of Children Services Report. They are caring, loving Muslims and have no criminal record. They have fully bonded with their adoptive parents. They also understand the consequences of adoption and that it is permanent. They appreciate the role of a parent and admit they will treat the children like their biological children. It's my view that the applicants have met the necessary requirements to adopt the said four children.
21. On the question of whether the adoption is in the best interests of the children, guidance is drawn from Article 53(2) of *The Constitution* and sections 8(1) and (2) of The Children's Act 2022, which underscores the best interests of children as the primary consideration before making any decision concerning children.
22. I Am also guided by the decision of Nyakundi, J in the case of *In re B (Baby)* [2018] KEHC 6114 (KLR), where he stated that:-

“The purpose of Kenya's Constitution and Children's Act is to protect and promote the welfare of Children by providing them with stable family units. The fundamental concern, therefore, in every adoption cause provision is in the best interest of that very child.

That law presumes that by granting foster care the adoptive parties will provide and promote a stable, supportive and nurturing environment for the child. From the reports filed by the



Director Children Services and Kenya Children's Homes adoption agency both applicants are in good health, have fulfilled the condition's precedent set out under section 158 of the Children's Act.

It is also not in dispute that they both have a steady income and a home where they live together. During the pendency of these proceedings both applicants have had the opportunity to bond with the child since her placement in their custody.

It is that family unit that *the constitution* contemplates under Article 45 which also has to take responsibilities in fulfilling the obligations enjoined in Article 53 of the same constitution."

23. The four children herein do not have a biological father, as he is deceased. Their biological mother has remarried and relocated from Kenya to Ethiopia where she has four other children with her Ethiopian husband. Their grandmother, the sole caregiver, is old. During the hearing, the court noted that the children's school attendance was of great concern. The joint applicants will help the children continue their schooling and give them better life chances. The chance to relocate to America for further studies will be greater if the adoption application is allowed. Like any other children, the adoptive children need parental care and guidance. They also need basic necessities like food, shelter, education, and clothing. They have fully integrated with the joint applicants. It is obviously in the best interests of the children that this adoption application is allowed.
24. In my view, the adoption application has merit. I therefore issue the following orders:-
 1. I declare the children, MMO, AMO, RMO, and HMO, to be Kenyan citizens by birth;
 2. The consent of the biological father of the children to the adoption is hereby dispensed with since he is deceased;
 3. The joint applicants, Dr MAO and Dr FAR, are hereby authorized to adopt MMO, AMO, RMO, and HMO;
 4. The four children shall retain their current names;
 5. I appoint AAG and NAA as the Legal Guardians of MMO, AMO, RMO, and HMO and entrust them with the responsibility of taking care of the said children in the event the joint applicants become deceased or are otherwise permanently unable to take care of them before each of the said children attains the age of majority;
 6. The Registrar General is hereby ordered to make an entry recording the adoption order made herein and the respective dates of birth of MMO, AMO, RMO, and HMO, as being those indicated in their present birth certificates, in the Adopted Children's Registrar as provided for by Section 201 of the *Children Act*, 2022; and
 7. The guardian ad litem, AOF, is hereby discharged.
25. I make no orders regarding costs as this is a non-contentious adoption matter.
26. Orders accordingly

DATED AND SIGNED AT MOMBASA THIS 26TH DAY OF MARCH 2025. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.

GREGORY MUTAI
JUDGE



In the presence of:-

Mr Stephens Ngombo, for the Joint Applicants; and

Arthur - Court Assistant.

