



**In re VM & DM (Minors) (Adoption Cause E001 of 2022)  
[2025] KEHC 7705 (KLR) (29 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7705 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
ADOPTION CAUSE E001 OF 2022**

**RC RUTTO, J**

**MAY 29, 2025**

**IN THE MATTER OF**

**ENM ..... APPLICANT**

**RULING**

1. Before this Court is a Chamber Summons dated 23<sup>rd</sup> April 2025, seeking the following orders:
  - i. Spent
  - ii. That the consent of the biological father of the minors herein to this adoption be dispensed with
2. The Application is supported by the affidavit of ENM sworn on an even date who deponed that she was allowed to adopt the minors vide an adoption order issued on 14<sup>th</sup> October 2024 but the court failed to indicate that the consent of the father of the minors was dispensed with since he has not been in the children's lives neither has, he bothered to take up parental responsibility after the demise of their mother.
3. It was also stated that upon presenting the order to Registrar General of Adoption for processing of the Adoption Certificate, she was requested to secure an order stating that the consent of the biological father of the minors had been dispensed with. Based on the request she now seeks that the Consent of the Biological Father be dispensed with.
4. With regards to dispensation of Consent, Section 158 (4) of the *Children's Act*, 2022 provides as follows
  - (4) Subject to section 159 an adoption application shall be accompanied by the following written consents to the making of an adoption order in respect of any child—



- (a) the consent of every person who is a parent or guardian of the child or who is liable by virtue of any order or agreement to contribute to the maintenance of the child;
- (b) in the case of a child born out of wedlock whose mother is a child, with the consent of the parents or guardian of the mother of the child;
- (c) in the case of a child born out of wedlock whose father has acquired parental responsibility in respect of the child under the provisions of this Act, with the consent of the father;
- (d) on the application of one of the spouses, with the consent of the other spouse;
- (e) in the case of two spouses who are not Kenyan citizens and who are not resident in Kenya, with the consent of the court of competent jurisdiction or of a government authority situated in the country where both or one of the spouses is ordinarily resident, permitting the spouses to adopt a foreign child;
- (f) in the case of a child who has attained the age of 14 years, with the consent of the child.

5. Section 159 (1) of the same Act gives this court the power to dispense with consent. It provides as follows;

“

“(1) The court may dispense with any consent required under paragraphs (a), (b), and (c) of subsection (4) of section 158 if it is satisfied that—

(a).....;

(b) in the case of a person liable by virtue of an order or agreement to contribute to the maintenance of the child, that he has persistently neglected or refuses to so contribute;

(c) in any case, except in respect of the consents required under paragraphs (e) and (f) of subsection (4) of section 158 that the person whose consent is required cannot be found or is incapable of giving his consent or that his consent has been unreasonably withheld.”

6. After reviewing the court proceedings and supporting evidence for the adoption application, I note that this case involves kinship adoption, where the applicant seeks to adopt her late sister’s children. The applicant stated that she has consistently provided for the minors, ensuring all their needs are met. The adoption process was endorsed by the Machakos Children Officer, who emphasized that keeping the children within the family structure would be in their best interest. This view was further supported by the officer from Bunker Kenya Adoption Services, whose report confirmed that the children were eligible for kinship adoption and recommended that they be adopted by the applicant.

7. On 3rd October 2024, the court assessed the presented evidence and approved the kinship adoption. However, while granting the adoption order, the court did not explicitly exempt the requirement for consent from the biological fathers of the minors. According to the Adoption Society report dated 4th



June 2024, the biological fathers have shown no commitment to the welfare of the children since birth. Given this lack of involvement, the court finds no valid reason to withhold the exemption.

8. Above all, the best interests of the children remain paramount. Based on the circumstances, I find that finalizing the adoption process for V.M (15 years old) and D.M (10 years old) serves their best interests. Consequently, the applicant's application dated 23rd April 2025 is hereby granted, and the requirement for paternal consent from the minors' father is dispensed with in accordance with section 159(1) (b) and (c) of the *Children's Act*.
9. Consequently;
  - i. The consent of the biological fathers of the minors namely AMM and BVK be dispensed with pursuant to section 159 of the Children's Act, 2022;
  - ii. This order shall be read together with the orders issued by this court on 3<sup>rd</sup> October 2024.
  - iii. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 29<sup>TH</sup> DAY OF MAY, 2025.**

**RHODA RUTTO**

**JUDGE**

In the presence of;

Sam Court Assistant

