



**In re CW alias RMM (Minor) (Adoption Cause E009 of 2022)
[2024] KEHC 593 (KLR) (29 January 2024) (Judgment)**

Neutral citation: [2024] KEHC 593 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
ADOPTION CAUSE E009 OF 2022
HM NYAGA, J
JANUARY 29, 2024
IN THE MATTER OF AN APPLICATION FOR ADOPTION OF
(MINOR) CW ALIAS RM**

IN THE MATTER OF

LMB APPLICANT

JUDGMENT

1. By the Originating Summons dated 16th June,2022 LMK sought, among other orders, the authority to adopt the child by the name C.W to be known as R.M.M.
2. According to court documents the background to this was that the child was abandoned and by the date of the application, no one had come forth to claim her and efforts to trace her parents were in vain.
3. The applicant filed together with the Originating Summons, her affidavit in support, and the supporting documents viz;The Certificate declaring the child available for adoption marked as Exhibit 1Report declaring a child available for marked as Exhibit 2.Social Inquiry Report station marked as Exhibit 3.A copy of police letters from Police Station marked as Exhibit 4.A copy of the letter from Ministry of Gender, Children and Social Development Children’s Department marked as Exhibit 5.Copy of the Committal Order, Media Publications, foster care placement letter & home assessment marked as Exhibit 6.Copies of identity Card of the Applicant marked as Exhibit 7.
4. BKM, was appointed to act as guardian ad-litem vide a court order issued on 8th June,2022. She filed her Affidavit of consent dated 25th May,2022 and a confidential report approving the adoption.
5. The proposed guardian legal guardian similarly filed her affidavit dated 16th June,2022. A perusal of the same shows that she understands her responsibilities as a legal guardian as stated in Section 122 of the *Children’s Act*,2022. She also filed consent to act as a legal guardian.
6. Child Welfare Society of Kenya (CWSK) filed their report dated 17th May,2022 declaring the child free for adoption.



7. The said report indicates that the child approximate date of birth is 01.12.2007 and was abandoned on 20th June,2011 in Bondeni Estate and taken to Nakuru Police Station by a good Samaritan. The matter was booked vide OB No. 61/20/06/2011 at the said station. The child was rescued and committed through Nakuru Chief Magistrates Court to Holy Family Children’s Home under Protection and care No.513 of 2011 as the investigations into the child’s case was being carried out by the Police officers from Nakuru Police Station.
8. The Police were unsuccessful in their investigation and on 29th January, 2017,11th April,2017 and 16th May,2017, CWSK ran adverts in the Daily Nation seeking to trace the Child’s family but it was similarly unsuccessful. On 5th April, 2014 the child was placed with the Applicant on a foster care awaiting adoption and the child has continued being under her care and protection.
9. CWSK found the applicant had bonded well with the child and was suitable in all aspects to be an adoptive mother, and recommend her for the adoption order sought.
10. The Applicant appeared before me on 7th December,2023 and expressed her desire to adopt the child and committed to take care of all her needs.
11. The guardian ad litem also appeared before me on the same date and in her testimony she recommended the applicant for the appointment. Similarly, the minor was present and I observed that she had bonded well with the Applicant.
12. In her submissions, the Applicant posited that she has attained the criteria for adoption as provided under Sections 185 and 186 of the Children Act,2022.
13. The Applicant also averred that by dint of her dual citizenship this is a local adoption, and she has fulfilled all the legal requirements relating to the adoption of the child set out under Section 192 as read with Section 191 of the Children Act 2022. In buttressing her submissions, she cited the provisions of Article 3 of the United Nations Convention on the Rights of the Child and the case of MWM v MVM [2020] eKLR.
14. From the foregoing the only issue is whether the applicant is deserving of the orders sought and whether the orders would be in the best interest of the child.
15. Section 186 provides for category of persons in favour of whom an adoption order may be made as follows: -
 - (1) The Court may make an adoption order on application by—
 - (a) a sole applicant; or
 - (b) two spouses jointly.
 - (2) The Court shall not make an adoption order in any case unless—
 - (a) the applicant has attained the age of twenty-five years, but is not above the age of sixty-five years; and
 - (b) the applicant, or both of the applicants in a joint application, is more than twenty-one years older than the child.
 - (3) The restrictions in subsection (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.



- (4) The Court shall not make an adoption order in favour of a sole male applicant, unless the applicant is a blood relative of the child.
 - (5) The Court shall not make an adoption order in favour of the following persons unless the Court is satisfied on reasons to be stated on the record that there are special circumstances that warrant the making of the adoption order an applicant or joint applicants who has, or both have, attained the age of sixty-five years.
 - (6) The Court shall not make an adoption order in favour of an applicant or joint applicants if the applicant or joint applicants, or any of them—
 - (a) is of unsound mind within the meaning of the *Mental Health Act* (Cap. 248);
 - (b) is incapable of exercising proper care and guardianship of a child;
 - (c) has been convicted by a Court of competent jurisdiction for any of the offences specified in the Third Schedule or similar offences;
 - (d) in the case of joint applicants, if the applicants are not married to each other;
 - (e) is a sole male applicant except where the applicant is a biological relative of the child; or
 - (f) is a foreign applicant except where the applicant is a biological relative of the child.
 - (7) Notwithstanding anything contained in this section the Court may at its sole discretion decline to make an adoption order in favour of any person or persons if the Court is of the view that it is not in the best interest of the child to make the order.
16. Section 192 of the above *Act* provides for Adoption by non-resident Kenyans as follows: -
The requirements of section 191 shall apply to adoption by—
- (a) citizens of Kenya who are not ordinarily resident in Kenya;
 - (b) citizens of Kenya who have dual citizenship, but who are not ordinarily resident in Kenya; and
 - (c) persons who were citizens of Kenya by birth but have lost the same status by operation of the law.
17. In the present case, the Applicant is the only person available to adopt the child. The child was abandoned and CSWK’s social worker and Managing trustee recommended that the Applicant be allowed to adopt the baby herein. At the time of making this application the Applicant was 64 years as such she has met the criteria set out under Section 186(2) of the *Act*.
18. In law, in any matter concerning a child, the best interests of the child are paramount. Article 53(2) of the *Constitution* provides the guiding principle on this question as follows:
- “A child’s best interests are of paramount importance in every matter concerning the child.”
19. This principle also finds expression Under Section 8 of the *Children’s Act*.
20. In view of all the above, this court is satisfied that the applicant has fulfilled all the legal requirements and able to take care of the child. The home visits by the Adoption Society established that the applicant has the financial and emotional capability to provide for the upkeep and education of the child. In the period that the applicant has had the custody of the child, the child has bonded well with



her and it would be in the best interest of the child to be adopted by the applicant. *In re Baby CK (Child)* [2021] eKLR the court expressed the view that;

“...it is in the best interest of the child to be adopted by the applicant. The applicant has demonstrated her capability to provide a conducive home and family environment in which the child will grow and develop. She will assume all parental rights and obligations of the biological parents of the child once adopted, and shall treat her as if he was born to her. She has been made aware that once the adoption order is made, it shall be final and binding during the lifetime of the child. The child shall have the right to inherit her property. The applicant shall not be able to give up the child owing to any subsequent unforeseen behaviour or other changes in the child...”

21. In *Weller & others vs Associated Newspapers Ltd* {2015} ALL ER (D) 194:

“These best interest may be held in a variety of different contexts for example the balancing exercise must always be undertaken in children’s cases as in adult cases although a child’s right is not a trump card in the balancing exercise, the primacy of the best interests of a child means that, where a child interest would be adverse by affected, they must be given considerable weight.”

22. *Children’s Act the Geneva Declaration of the Rights of the Child* {1924} in Article (2) provides:

“That the child shall enjoy special protection, and shall be given opportunities and facilities, by Law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of Laws for this purpose the best interest of the child shall be the parent considerations.”

23. The best interest of the child’s right is a principle derived from Article 3 of the *United Nations Convention on the rights of the child* that: -

“In all actions concerning children whether undertaken by the public or private social welfare institutions, courts of law administrative authorities of legislative bodies, the best interests of the child shall be primary consideration”.

24. In *Re B(Baby)*[2018]eKLR the court stated that,

“The purpose of Kenya’s *Constitution* and *Children 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 of the best interest of that very child...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.”

25. For the going reasons, I allow the application for adoption in the following terms;

1. The applicant be and is hereby authorized to adopt and the child be henceforth to be called R.M.M.
2. The Child be and is hereby presumed to be a Kenyan Citizen by birth.



3. That the Registrar-General do make the appropriate entries in the adopted children's register with respect to the child and a subsequent Birth Certificate be issued by the Registrar of Births and Deaths.
4. EO be and is hereby appointed as the legal guardian.
5. The guardian ad litem is discharged.

DATED, SIGNED & DELIVERED IN NAKURU THIS 29TH DAY OF JANUARY, 2024.

H. M. NYAGA

JUDGE

In the presence of;

C/A Jeniffer

N/A for parties

