



**In re NJ & NJ (Minors) (Adoption Cause E003 of 2023)
[2024] KEHC 399 (KLR) (26 January 2024) (Judgment)**

Neutral citation: [2024] KEHC 399 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAJIADO
ADOPTION CAUSE E003 OF 2023
SN MUTUKU, J
JANUARY 26, 2024**

**IN THE MATTER OF AN APPLICATION FOR ADOPTION OF NJ AND NJ
IN THE MATTER OF THE CHILDREN’S ACT
NO. 29 OF 2022 AND THE ADOPTION RULES**

IN THE MATTER OF

**BOG 1ST APPLICANT
SJS 2ND APPLICANT**

JUDGMENT

1. By an Originating Summons dated 26th May 2023, the applicants have approached this court seeking the following orders:
 - i. Spent.
 - ii. That KOG be appointed Legal Guardian for the NJ and NJ, the two minors.
 - iii. That the applicants be authorized to adopt NJ and NJ (minors).
 - iv. That the minors will acquire new names upon adoption.
 - v. That the court do issue such further orders as may be deemed fit to meet the interest of justice.
2. The application is supported by grounds found on the face of it and in the supporting affidavits of both applicants. The application was argued through oral submissions on 22nd January 2024. On 27th November 2023, this court appointed CWK as Guardian *Ad Litem* and directed that she and the Director of Children Services do file reports on the suitability of the applicants to adopt the two minors.
3. From the materials placed before me, this is a kinship adoption. SJS, the 2nd Applicant is the biological mother of the two minors NJ and NJ. She is married to the 1st Applicant through customary law and



a certificate of marriage to that effect has been availed to the court. The 2nd Applicant has lived with the two minors since their birth while the 1st Applicant has lived with them since the court granted the two applicants custody orders vide Children’s Case No. E190 of 2022.

4. The 1st Applicant, an IT Consultant, was born on 3rd June 1979 while the 2nd Applicant, a banker with Kenya Commercial Bank, was born on 20th October 1984. The two minors are aged 11 years and 9 years respectively. Court was informed that the biological father of the two minors cannot be found and has never been in the minors’ lives.
5. The two minors are capable of being adopted under the Children’s Act and according to reports from the KKPI Adoption Society. I have read the reports from the KKPI Adoption Society and I am satisfied that the two minors are free for adoption by the Applicants.
6. I have also read the report of the Directorate of Children Services, Kajiado County signed by Ms Anne W. Kang’ethe, the County Coordinator, Children Services. Both reports are positive and recommend that the Applicants be authorized to adopt the two minors.
7. I have considered the applicable law in this matter. Article 53 of the Constitution of Kenya 2010 is specific on the rights of children. It provides that:

53.

(1) Every child has the right—

- (a) to a name and nationality from birth;
- (b) to free and compulsory basic education;
- (c) to basic nutrition, shelter and health care;
- (d) to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour;
- (e) to parental care and protection, which includes equal responsibility of the mother and father to provide for the child, whether they are married to each other or not; and
- (f) not to be detained, except as a measure of last resort, and when detained, to be held—
 - (i) for the shortest appropriate period of time; and
 - (ii) separate from adults and in conditions that take account of the child’s sex and age.

(2) A child’s best interests are of paramount importance in every matter concerning the child.

8. Among the rights spelt out under Article 53, there are those rights that must be observed by the parents of the child and the Applicants, in seeking to adopt the two minors, must obey the constitutional command to observe the rights of the two minors as spelt out. The paramount importance in all matters concerning the child is the best interests of that child as stated under Article 53 (2) above. The same requirement is repeated in the Children’s Act 2022 under Section 8.



9. The “best interest of the child” is defined under section 2 of the *Children’s Act* as follows:
- “best interest of the child” means the principles that prime the child’s right to survival, protection, participation and development above other considerations and includes the rights contemplated under Article 53 (1) of the *Constitution* and section 8 of this Act.
10. It is my considered view that the rights of the minors to survival, well-being, protection, development and right to be cared for by parents and all the best interest considerations specified under the First Schedule of the *Children’s Act*, will be best observed and fulfilled within the family composed of the parents (Applicants), siblings and other family members.
11. For this reason, and after considering the positive reports filed herein in respect to this adoption, it is my considered view that it is in the best interest of the two minors that this adoption be allowed. Consequently, the Originating Summons dated 26th May 2023 is hereby allowed in the following terms:
- i. That the Applicant, BOG and SJS, are hereby authorized to adopt NJ and NJ, minors.
 - ii. That the NJ shall be renamed TNAG and NJ shall be renamed WNAG as specifically shown on the Report of the Directorate of the Children Services, Kajiado.
 - iii. That KOG is hereby appointed the Legal Guardian of the minors.
 - iv. That CWK, the Guardian Ad Litem is hereby discharged from the responsibilities of a Guardian Ad Litem.
12. Orders shall issue accordingly.

DATED, SIGNED AND DELIVERED THIS 26TH DAY OF JANUARY 2024.

S. N. MUTUKU

JUDGE

