



REPUBLIC OF KENYA



**In re AM (Child) (Adoption Cause E067 of 2023)
[2024] KEHC 2933 (KLR) (Family) (22 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 2933 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E067 OF 2023
PM NYAUNDI, J
MARCH 22, 2024**

JUDGMENT

1. Before this Court is the Originating Summons, Statement in support of Application and Affidavit in Support all dated 12th April, 2023 respectively by which the Applicant seeks that; -
 - i. The Ms. AU (the Applicant herein) be authorized to adopt AM (minor herein).
 - ii. The child be known as AM.
 - iii. That HSA and ASM be appointed as Legal Guardians of AM.
 - iv. That the Court be pleased to make any further orders it deems necessary.
2. The matter was canvassed by way of vive voce evidence on the virtual platform on 7th March, 2024 where the Applicant stated that she is a Kenyan by birth and currently resides in Canada where she lives and work for gain as a Nurse and a businesswoman. The Applicant was previously married under customary law in another relationship which they separated. It Applicant's statement that out of that marriage they were blessed with one subject RU who is 11 years old and lives in Canada with the Applicant.
3. It's the Applicant's assertion that the minor is her nephew. The minor's biological mother ZMA is her cousin hence Kinship Adoption provided under Section 193 of the *Children Act* 2022.
4. The Applicant wishes to adopt her nephew with the intention of providing for him an opportunity, a strong sense of identity, security, stability and belonging. The Applicant stated that she has been taking care of the minor since the separation of his parents by meeting all the minor's needs and accepted the minor as her own son. The minor is 10 years old. The Applicant further stated that she would like the minor to join her in the Canada since she has the means to provide for the child. It's Applicant's averment that she understands the legal implications of the Adoption order.



5. The child (male) who is the subject of the present adoption proceedings was born on 1st April, 2014. The minor was born to FA and MSM. The minor has been going through life challenges together with his other three siblings and it is at that point that the Applicant decided to adopt the minor herein.
6. That on 18th November 2022, an assessment and approval by Little Angels Network Adoption Society was carried and consent from the biological siblings of the minor, the consent from the minor, the minor was declared free for adoption by the Little Angels Network Adoption Society Vide a Certificate of Freeing Serial Number XXXX.
7. On 20th July, 2023 this Court issued an order appointing Sandy Ogechi as the child's guardian ad litem, and further directing the guardian ad litem and the Director of Children's Services to investigate suitability and fitness of the Applicant and subsequently, file their respective reports within 45 days.
8. Pursuant to Section 102 of the *Children Act*, before this matter came up for hearing, Ezekiel Kimani the Assistant Director of Children's Services prepared and filed in Court a favorable report dated 25th October, 2023 in respect of the proposed adoption of the minor by Applicant. He stated that the Applicant has proposed HSA and ASM to be appointed Legal Guardians in case of death or incapacity. The Assistant Director further stated that the Applicant has always provided for the minor and this being a Kinship Adoption it will be in the best interest of the minor. Another report in respect of the proposed adoption of the minor was prepared by Little Angels Network, and this report was similarly in favour of the proposed adoption where they stated that they were satisfied that the Applicant herein meets the legal and social parameters for adoption.
9. Subsequently, a detailed Statutory Report was also filed by the guardian ad litem, SS in which he noted that the Applicant is very close and communicate so well with the minor also capable of raising the minor hence recommended the adoption of the minor.
10. The reports indicate that the Applicant is financially, medically fit and emotionally capable of providing the child with care, protection and education. She has no criminal record as evidenced by a copy of Police Clearance Certificate Serial No PCC-B5T709L6. This Court has evaluated the facts of this adoption. This is a Kinship adoption. It is evident that the Applicant has fulfilled all the legal requirements relative to the adoption of the child.
11. The consent of the biological parents of the child was dispensed with since they reached out to Little Angels Network to discuss their intention to give up their son (minor herein) for adoption by the Applicant. The home visits by the guardian ad litem, the Adoption Society and the Assistant Director of the Children's Services established that the Applicant has the financial and emotional capability to provide for the upkeep and education of the child.
12. Additionally, the consent from Hafsa SAR the Applicant's first cousin and ASM wife to Hafsa Seif Abdul Rabii stated in online Court Platform that they understand the role of a legal guardian and in case of the absence of the Applicant they will assume full responsibility of the child therefore consented to Adoption Proceedings.
13. This Court observed the Applicant with the minor in Court and it was evident that in the period that the Applicant has had the custody of the child, the child has bonded well with her. The child was present in Court and stated that he understood the Adoption Proceedings and that it meant the Applicant will acquire full parental responsibilities over him and he consented to the Adoption Proceedings.



14. After carefully assessing the records herein, I am satisfied that the Applicant has fulfilled all the legal requirements relating to the Child's adoption. Section 186 of the Children Act, 2022 provides. The court may make an adoption order on application by-
- (1)
 - (a) Sole applicant; or
 - (b) Two spouses jointly.
 - (2) The court shall not make an adoption order in any case unless-
 - i. the applicant has attained the age of twenty-five years, but is not above the age of sixty-five years; and
 - ii. 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.
15. This Court is alive to the Jurisdiction of the High Court vide Article 165 Constitution of Kenya 2010 and Section 183(1) Children Act 2022. The Court is conscious of the law; Article 53 Constitution of Kenya 2010, Section 8 of Children Act 2022 and the UN Convention on the Rights of the Child & African Charter on the Rights & Welfare of the Child all amplify on the best interests of the child.

Determination

16. On the basis of a careful examination of the documents presented before me as well as the observations made therein, this Court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicant.
17. Accordingly, I allow the prayers sought in the Further Amended Originating Summons dated 12th April, 2023 and order as follows:
- i. The Applicant, AU be hereby allowed to adopt M.
 - ii. Henceforth, the child shall be known as AM
 - iii. His date of birth shall be 1st April, 2014 and place of birth at Al Najina Medical Centre
 - iv. He is presumed to be a citizen of Kenya by birth.
 - v. HAR And Ahmed SMR shall be the Legal Guardians of the child.
 - vi. The Registrar General to enter this order in the Adoption Children Register.
 - vii. The Director Immigration to issue the child with a Kenyan Passport.
 - viii. The Guardian *Ad litem* is discharged.

It is so ordered.

DELIVERED DATED & SIGNED IN OPEN COURT ON 22ND MARCH, 2024.

P. NYAUNDI

JUDGE

In presence of: -



Sylvia Court Assistant

