



**In re JM (Minor) (Adoption Cause E059 of 2024)  
[2024] KEHC 10589 (KLR) (Family) (29 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 10589 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY**

**ADOPTION CAUSE E059 OF 2024**

**CJ KENDAGOR, J**

**JULY 29, 2024**

**IN THE MATTER OF ADOPTION OF BABY JM (MINOR) BY SKN AND NWK**

**IN THE MATTER OF**

**SKN ..... 1<sup>ST</sup> APPLICANT**

**NWK ..... 2<sup>ND</sup> APPLICANT**

**JUDGMENT**

1. Before this Court is the Originating Summons application dated 7<sup>th</sup> March, 2024. The Applicants SKN and NWK are seeking to be authorized to adopt Baby JM, hereinafter referred to as the child. Upon adoption, the child is to be known as JMK, and GJN and HWN will be appointed as the child’s legal guardians upon the granting of the adoption orders.
2. The Applicants are a married couple and Kenyan citizens, as evidenced by the marriage certificate and copies of their Kenyan National Identity Cards. SKN has dual citizenship and is a US citizen, as evidenced by his Passport. The Assistant Chief of Muslim Sub Location in Kawangware confirmed that the applicants are residents of that Sub Location vide a letter dated 22<sup>nd</sup> February, 2024.
3. The Applicants, SKN and NWK, are financially capable and able to provide for the child. SKN is self-employed and runs truck and real estate business in the USA, while NWK is self-employed and runs a beauty business in Nairobi’s central business district. Their financial stability is evidenced by the Mpesa statement for one year, the period around the processing of the adoption proceedings.
4. Their health status is good, as evidenced by their medical reports. They have indicated that they would like to legalize the relationship between the child and SKN through kinship adoption to enable the child to become a complete member of the family and receive other benefits from SKN.



5. The minor has been under the sole custody, care, and control of NWK for the last eleven years. The biological father abandoned the mother before the minor was born. SKN has been actively involved in the minor's life and has supported his wife, NWK, in fulfilling parental responsibilities over the minor. The inquiries show that they bond and relate very well.
6. The report from the Ministry of Labour and Social Protection State Department of Social Protection —Directorate of Children's Services (Nairobi County) dated 3rd June 2024 confirms the child's eligibility for adoption. The child, an 11-year-old male, was born in 2013 to NWK, SKN's wife, and is a Kenyan citizen. The child was declared free for adoption on 1st March, 2024 by Change Trust, as indicated by the Freeing Certificate Serial Number 00653.
7. The child is a Kenyan citizen by virtue of Article 14 (1), which 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.
8. In light of the best interests of the child principle provided for under Article 53 (2) of the Constitution of Kenya, 2010, Sections 8 (1), (2), and (3) of the Children's Act No. 29 of 2022, and the 1st Schedule of the Children's Act No. 29 of 2022, this Court must prioritize the child's best interests in making decisions affecting him.
  - a. Article 53 of the Constitution, 2010 states that a child's best interests are of paramount importance in every matter concerning the child.
  - b. Sections 8 (1), (2) and (3) of the Children's Act No. 29 of 2022 provides as follows;
    1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies:
      - a. The best interests of the child shall be the primary consideration;
      - b. The best interests of the child shall include, but shall not be limited to the considerations set out in the First Schedule.
    2. All judicial and administrative institutions, and all persons acting in the name of such institutions, when exercising any powers conferred under this Act or any other written law, shall treat the interests of the child as the first and paramount consideration to the extent that this is consistent with adopting a course of action calculated to:-
      - a. safeguard and promote the rights and welfare of the child;
      - b. conserve and promote the welfare of the child; and
      - c. secure for the child such guidance and correction as is necessary for the welfare of the child, and in public interest.
    3. In any matters affecting a child, the child shall be accorded an opportunity to express their opinion, and that opinion shall be taken into account in appropriate cases, having regard to the child's age and degree of maturity.
  - c. The First Schedule, as provided for under Section 8 (1) of the Children's Act No. 29 of 2022, provides best interests considerations to be as follows:
    1. The age, maturity, stage of development, gender, background, and any other relevant characteristics of the child.



2. Distinct special needs (if any) arising from chronic ailment or disability.
  3. The relationship of the child with the child's parent (s) and/ or guardian (s) and any other persons who may significantly affect the child's welfare.
  4. The preference of the child, if old enough to express a meaningful preference.
  5. The duration and adequacy of the child's current living arrangements and the desirability of maintaining continuity.
  6. The stability of any proposed living arrangements for the child.
  7. The motivation of the parties involved and their capacities to give the child love, affection, and guidance.
  8. The child's adjustment to the child's present home, school, and community.
  9. The capacity of each parent or guardian to allow and encourage frequent and continuing contact between the child and the other parent and/or guardian (s), including physical access.
  10. The capacity of each parent and/or guardian (s) to cooperate or to learn to cooperate in child care.
  11. Methods for assisting parental and/or guardian cooperation and resolving disputes and each parent's/guardian's willingness to use those methods.
  12. The effect of the child if one parent/guardian has sole authority over the child's upbringing.
  13. The existence of domestic abuse between the parents/ guardian (s), in the past or currently, and how that abuse affects the emotional stability and physical safety of the child.
  14. The existence of any history of child abuse by a parent and/ or guardian (s); or anyone residing in the same dwelling as the child.
  15. Where the child is under one year of age, whether the child is being breast-fed.
  16. The existence of a parent's (s) or guardian's (s) conviction for a sex offense or a sexually violent offense under the *Sexual Offences Act*.
  17. Where there is a person residing with a parent or guardian, whether that person; -
    - a. Has been convicted of a crime under this Act, the *Sexual Offences Act*, the *Penal Code* or any other legislation.
    - b. Has been adjudicated of a juvenile offence which, if the person had been an adult at the time of the offence, the person would have been convicted of a felony.
  18. Any other factor which may have a direct or indirect effect on the physical and psychological well-being of the child.
9. The report from the Ministry of Labour and Social Protection State Department of Social Protection —Directorate of Children's Services (Nairobi County), the report from Change Trust, the *guardian*



*ad litem*, and the proposed legal guardians indicate that the child will be well taken care of in the care and custody of the adoptive parents and that his growth and development are guaranteed.

10. This adoption also secures the child's interests as it will formalize legal ties with the stepfather, SKN.
11. In the circumstances, I allow the originating summons dated 7<sup>th</sup> March, 2024 and make the following orders: -
  - a. The Applicant SKN is authorized to adopt the child known as JM.
  - b. Upon adoption, the child shall be known as JMK.
  - c. The child is declared a Kenyan citizen by birth and is entitled to all rights and benefits under the Constitution of Kenya, 2010, and all applicable laws.
  - d. GNN and HWN are appointed as the child's legal guardians.
  - e. The Registrar General is directed to make the relevant entries in the Adopted Children's Register for the child.
  - f. The Registrar of Births and Deaths is directed to issue a birth certificate for the child with the new name.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THE 29<sup>TH</sup> DAY OF JULY, 2024.**

**C. KENDAGOR**

**JUDGE**

In the presence of:

Court Assistant: Ahmed

Ms. Ambaka, Advocate

