



**In re TH (Minor) (Adoption Cause E002 of 2024)
[2024] KEHC 17242 (KLR) (26 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 17242 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
ADOPTION CAUSE E002 OF 2024
TM MATHEKA, J
JULY 26, 2024**

IN THE MATTER OF

**JMK 1ST APPLICANT
VNM 2ND APPLICANT**

JUDGMENT

1. On 22/7/2022 Baby E was born at Ruiru sub-county hospital and referred to Thika Level 5 hospital due to respiratory distress. It is here that his mother abandoned him. The matter was reported to Thika Police Station under OB no. 71/28/07/2022. The child was admitted to Newlife Home Trust on 11/8/2022 and was formally committed to the home on 01/11/2022 via Protection and Care No. file E021/22 at Ruiru Children’s court. On 16/6/2023, the Buckner Kenya Adoption Services declared the child free for adoption vide certificate no. No. 0654.
2. Baby TH was born on 27/05/2022 at Ponya Medical Centre to one SMG who offered the child for adoption through Change Trust Adoption Agency. On 21/6/2022 TK was committed to Newlife Home Trust through Ruiru sub-county children office and on 19/7/2022 the case committee Change Trust declared him free for adoption vide certificate No. 0XXX8.
3. On 9/3/2021, JMK wrote to Buckner Kenya on his, and his wife’s VNM’s behalf requesting to be considered for the adoption of one or two male children between 2-3 years.
4. The couple was assessed by Buckner Kenya Adoption Services case committee sitting on 27/4/2022 and their application and was satisfied that the applicants were fit to adopt two male children aged between 6 months to 2 years old.
5. Both E & TH were placed in the Care and Protection of the couple on 2/12/2022.
6. On 22/2/2024 the prospective adoptive parents – the applicants filed separate applications to adopt each of the children.



7. The applicants Originating Summons dated 19/2/2024 is each supported by the statement in support of the application.
8. The application is supported by all the requisite documents – that demonstrate the age, health, economic, financial and social capacity of the applicants demonstrating the applicants ability and capacity to be adoptive parents of each of the two children.
9. In addition, the Directorate of Children Services filed their social inquiry report with respect to the adoptive parents and on each of the two children, and how the adoptive parents have demonstrated a visible bond with the children and how the children have bonded with each other.
10. The adoptive parents have also appointed the same couple as the Legal Guardian of their children – DNK and BWK who have committed to take up the parEl responsibilities for the two children should the adoptive parents be unable to parent.
11. I heard oral testimony from the adoptive parents and the legal guardians – I observed the children in court – and it is evident that a family is forming right there.
12. After considering all the evidence on record and all the documents the only issue is whether the applicants’ have met the required thresholds to warrant the orders sought in their applications dated 19/7/2024 seeking orders:
 1. That the applicants be authorized to adopt BABY EN AKA TA a minor who is to be known as AMM
 2. That the applicants be authorized to adopt BABY TH (BABY TH) a minor who is to be known as AMM
 3. The Registrar General be directed to enter this adoption into the Adoption Register.
 4. That DNK and BWK be appointed as the legal guardians of the child.
 5. That the child be presumed to be born in Kenya.
13. Article 53 of *the Constitution* provides that
 - (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 parEl 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
14. These rights of the child will be actualized by the child within the family; Article 45 (1) states that the family is the natural and fundamental unit of society and the necessary basis of social order...
 15. It is the realization that not every child can have the biological family that adoption offers an appropriate alternative where the applicant will take up the parental responsibility for the child permanently as though that child was born of them, and to provide the full family package,
 16. Do the applicants understand that adoption order they are seeking means that they will be vested with the parental rights and responsibilities relating to the children and that the children will be permanently placed with them?
 17. That is the issue here.
 18. I add that Adoption is one of the alternative means by which a child – whose parents/guardian are unable to parent to be guaranteed the right to social security as provided for under Article 43(3) of *the Constitution*. This means that the adoptive parents must understand the permanence of the order – and that by obtaining the adoptive order – these persons are taking over the complete lives of the children as they are, as they will become and provide for them as though they were their own.
 19. Hearing the applicants reveals that they do.
 20. In addition, they have complied with the statutory requirements of the *Children Act*, no 29 of 2022.
 21. They are ready and able, having lived with the children since last year to become adoptive parents – the children deserve a home, a family, a name, a heritage and by adopting them the applicants are offering all these and more.
 22. In the circumstances, I find no reason to deny their application to adopt each of the children. The following orders issue:
 - a. That the applicants be and are hereby authorized to adopt BABY EN AKA TA to be known as AMM and BABY TH to be known as AMM.
 - b. The Registrar General be and is hereby directed to enter this adoption into the Adoption Register and to issue the requisite certificates.
 - c. That DNK and BWK be and are appointed as the legal guardians of the children.
 - d. Orders accordingly

DATED SIGNED AND DELIVERED VIRTUALLY, THIS 26TH JULY 2024 MUMBUA T. MATHEKA

JUDGE

SIGNED BY: LADY JUSTICE MATHEKA, TERESIA MUMBUA

THE JUDICIARY OF KENYA.

MAKUENI HIGH COURT

HIGH COURT DIV

DATE: 2024-08-05 15:12:58

