



**In re Baby RZ aka DS aka GM (Adoption Cause E072 of 2024)
[2024] KEHC 10595 (KLR) (Family) (25 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 10595 (KLR)

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

ADOPTION CAUSE E072 OF 2024

CJ KENDAGOR, J

JULY 25, 2024

IN THE MATTER OF ADOPTION OF BABY RZ AKA DS AKA GM (BY TMM AND TNM)

IN THE MATTER OF

TMM 1ST APPLICANT

TNM 2ND APPLICANT

JUDGMENT

1. Before this Court is the application dated 22nd March 2024. The Applicants, TMM and TNM, are seeking to be authorized to adopt Baby RZ aka DS aka GM, hereinafter referred to as the child. Upon adoption, the child is to be known as TMM. TMM and TNM 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 copies of their Kenyan National Identity Cards and Certificate of Marriage. TMM and TNM are employed; their bank statements and payslips evidence their financial capability and ability to provide for the child. Their health status is good, as evidenced by their medical reports dated 11th May, 2023, and they do not have any previous criminal records, as evidenced by their certificates of Good Conduct issued by the Directorate of Criminal Investigations. They have indicated their desire to adopt the child by their being married without being blessed with children, and they have already adopted one child, baby TMM. The applicants desire to help needy children and to grow their family.
3. The report from the Ministry of Labour and Social Protection State Department for Social Protection and Senior Citizen Affairs – Directorate of Children’s Services (Nairobi County) dated 24th April 2024 indicates that the child is male and 1 year old. He is Kenyan, whose biological mother abandoned him after birth and was born at Athi River Level IV Hospital in Kenya. The child was declared free for



adoption on 4th December, 2023 by Buckner Kenya Adoption Services (BKAS) vide freeing Certificate Serial Number 0720.

4. There is a consistent message that there is the urge for TMM and TNM to have children of their own and their motivation to provide for an abandoned child.
5. The child is a Kenyan citizen by 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.
6. 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 touching on her.
 - a. Article 53 of *the Constitution*, 2010 states that a child's best interests are paramount 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.
7. The report from the Ministry of Labour and Social Protection State Department for Social Protection and Senior Citizen Affairs – Department of Children's Services (Nairobi County), the report from



Buckner Kenya Adoption Services (BKAS) Adoption Society, the guardian ad litem and the proposed legal guardians indicate that the child is well known to the adoptive parents and that he will be well taken care of in their care and custody.

8. I find that this adoption gives the child a chance at a better life and education in a loving and stable home with the adoptive parents.
9. In the circumstances, I allow the originating summons dated 22nd March, 2024 and make the following orders:
 - a. The Applicants TMM and TNM are authorized to adopt the child known as RZ aka DS aka GM
 - b. Upon adoption, the child shall be known as TMM.
 - 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. TMM and TNM are appointed as legal guardians of the child.
 - e. The Registrar General is directed to make the relevant entries in the Adopted Children's Register in respect of the child.
 - f. The Registrar of Births and Deaths is directed to issue a birth certificate in respect of the child's new name.
10. It is so ordered.

DATED AND DELIVERED AT NAIROBI VIA TEAMS ONLINE PLATFORM ON THIS 25TH DAY OF JULY, 2024.

C. KENDAGOR

JUDGE

Judgment delivered through the Microsoft Online Platform.

In the presence of:

Court Assistant - Ahmed

