



**In re Baby SKK (Adoption Cause E189 of 2022)
[2024] KEHC 13915 (KLR) (Family) (16 August 2024) (Judgment)**

Neutral citation: [2024] KEHC 13915 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E189 OF 2022
BK NJOROGE, J
AUGUST 16, 2024
IN THE MATTER OF BABY SKK
AND
IN THE MATTER OF AN APPLICANT FOR ADOPTION BY CWK**

**IN THE MATTER OF
CWK APPLICANT**

JUDGMENT

1. This is an Adoption Application by CWK as a Sole Applicant. She presented an Originating Summons dated 29th September, 2023. It is supported by the Statement of the Sole Applicant dated the 29th September, 2023 as well as the Affidavit of the Sole Applicant sworn on 29th September, 2023. It seeks the following orders;
 - i. That the Applicants, CWK be authorised to adopt the SKK (the Child).
 - ii. That FWK of Kenya National Identity Number 3688xxx be appointed as the legal guardian of the child in the event of the Applicant’s death or incapacity before the child is of age.
 - iii. That the Registrar General be directed to enter this adoption into the Adopted Children Registrar.
 - iv. That the Court be pleased to make any or further orders it may deem necessary.
 - v. That the Guardian *ad litem* be discharged.
2. At the preliminary hearing on 2nd November, 2023 Dorothy Mase was appointed as the Guardian *ad litem* and she subsequently filed the Guardian *ad litem*’s Report which she indicated is dated 29th



April, 2023. The Court notes that the copy available online through the Case Tracking System (CTS) is undated though it is signed. It supports the adoption without any reservations.

3. The Court also notes that the Director of Children Services has filed a Statutory Report dated 16th April, 2024.
4. The matter came up for hearing on 27th June, 2024 when parties were heard. It was adjourned for a mention on 11th July, 2024 to confirm filing of submissions. The Court notes that such submissions have been filed dated 5th July, 2024. The Sole Applicant is 34 years of age. She is a blood sister to the Child. They are all the children of the late DKK and the late MMK who both passed away on 24th October, 2017 and 26th July 2020 respectively. The copies of their death certificates serial number 0709872 and 094665 have been attached to the application. The Child as well as the Sole Applicant are orphans. Upon the death of their parents, the Sole Applicant took over the care of the child. The Sole Applicant is the second born in her family. She has an elder sister NNK, a younger sister FWK and the child who is the last born. The Siblings have consented to this adoption.
5. The Sole Applicant is an Optometrist by profession. She works at Lodwar Teaching and Referral Hospital since 2016. Currently she is enrolled for a degree course at Masinde Muliro University of Science and Technology.
6. The Sole Applicant is single, though she is open to marriage. She is aware of the irreversibility of the adoption order and that in a marriage she would be walking in with a child.
7. The Sole Applicant has been taking care of the child and his needs. She was appointed a Legal Guardian of the Child on 13th May, 2021 in Nairobi Miscellaneous Children Case No E039 of 2021 In the Matter Of DSK FK (minors) By CWK).

She has been living with the child since October, 2020. Her desire to adopt her brother is to give him stability in life, a secure home as well as nurture him with love. She will also be able to put him on her medical scheme as a beneficiary. Should she ever relocate from the Country she would be able to migrate with him. A situation that may be difficult in a Guardianship relationship. She desires the best for her brother. The Child the subject matter of this proceedings is totally orphaned, hence lacking parental figures in his life. The Applicant as elder sister has opted to step in and take up the roles of a parent. The Child who is aged 16 years still requires parental love and guidance in his life. The Sole Applicant as a sister is best suited to step into that role.

8. The Sole Applicant understands the permanency of an adoption order. She is also aware of the rights of inheritance of the child. Specifically, the Sole Applicant is fully aware that she will acquire all parental rights over the child. In turn, the child has the rights of inheritance over her own property.
9. The Child the subject matter of this proceedings is a Student at Moi Kabarak High School in Nakuru. The fees are paid by the Sole Applicant. He appeared in Court virtually and comprehended the adoption process. He has consented to it without any reservations.
10. KKPI Adoption Society issued a Certificate Declaring the child Free for Adoption, Serial Number 632 dated 20th September, 2023. This is pursuant to Section 184 (1) (a) of the *Children Act* Cap 141 of the Laws of Kenya.
11. The Sole Applicant was assessed by KKPI Adoption Society an Adoption Society and approved by its case committee for Adoption. The Child lives with the Sole Applicant.
12. His Biological siblings have given their consent signifying that they understand the process.



13. The Report of the Guardian *ad litem* doroth mase said to be dated 29th April, 2024 favours the adoption. She noted that the Child has adjusted well and is ready for this Kinship adoption. She appeared in Court virtually to present her Report.
14. The proposed Legal Guardian FWK also appeared in Court virtually. She is an elder sister to the Child and a younger sister to the Sole Applicant. She has consented to her appointment.
15. Jacqueline Wamboi Mwangi a representative of KKPI Adoption Society also attended Court virtually to confirm that the adoption process met the requirements of the Law. The Society approves the adoption as being in the best interests of the child. She confirmed that a Certificate freeing up the Child for Adoption had been issued.
16. Finally, Caroline Olilo the Principal Children Officer appeared in Court and adopted the Report dated 16th April 2024 prepared by Stephen Mule the Sub-County Children Officer Kakamega Central. He recommended the adoption.
17. The Court observed the Sole Applicant as well as the Child during the hearing and noted that this is a kinship adoption. The Sole Applicant is sister to the child. Hence this is an adoption within the family setting. The child is 16 years old and understands the nature of the orders sought herein as well as the adoption and has consented to the same. His other siblings have also consented to the adoption.
18. The Sole Applicant has demonstrated her financial capacity to take care of the child. She is in good health as a trained Optometrist she has good prospects in life. She has no criminal records as witness her police clearance certificate Ref PCC-DETVRKL dated 6th June, 2023.
19. The Court has taken note that the Sole Applicant is within the statutory age of adopting which between 25 and 65 years. The maximum statutory age for adoptions for an Applicant is set at 65 years. Section 186 of the [Children Act](#) Cap 141 states as follow'

“ 186 who may apply to adopt a child

- i. The Court may make an adoption order on application by: -
 - a. A Sole Applicant or
 - b. Two spouses jointly
- ii. The Court shall not make an adoption order in any case unless: -
 - a. The Applicant has attained the age of twenty-five years, but is not above the age of sixty-five years and
 - b. The Applicant, or both the Applicants in a joint application, is more than twenty-one years old than the child.
- iii. 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.
- iv. The Court shall not make an adoption order in favour of a sole male applicant, unless the applicant is a blood relative of the child.
- v. The Court shall not make an adoption order in favour of the following persons unless the Court is satisfied on reasons to be stated on the record that there are special circumstances that warrant the making of the adoption order an



applicant or joint applicants who has, or both have, attained the age of sixty-five years.”

20. The Court notes that in a Kinship adoption, the Child remains still very much part of the family. The adoption will provide the child with a stable home environment and an identity as well as security. He will be able to access medical benefits and may travel abroad with the Sole Applicant.
21. The Court has taken note of the Statutory Reports filed regarding this Adoption, all which favour the adoption.
22. The Court has considered all the facts presented in the adoption proceedings as well as evaluated the Reports and testimonies of all those parties who attended the virtual hearing on 27th June, 2024.
23. The Court is alive to its jurisdiction under Article 165 and 53 of the Constitution of Kenya, Section 183 (1) of the Children Act. The Court has considered Section 8 of the Children Act, the United Nations Convention on the Rights of the Child and the African Charter on the Rights of the Welfare of the Child.
24. This is a Kinship Adoption pursuant to Section 193 (1) of the Children Act. The guiding principle remains in the best interests of the child pursuant to Section 8 and 194 (1) (c) of the Children Act.
25. The Child is a Kenyan Citizen by birth.
26. The orders sought are merited in the circumstances.
27. The Court is persuaded that the adoption will provide the Child with a safe, permanent home and loving environment and hence is in the best interest of the child.

Determination

28. The Court makes the following order;
 - a. That the Applicant CWK be authorised to adopt SKK (the child).
 - b. That FWK of Kenya National identity Number 3688xxx be appointed as the legal guardian of the child in the event of the Applicant’s death or incapacity before the child is of age.
 - c. That the Registrar General be directed to enter this adoption into the Adopted Children Register.
 - d. That the relevant department under the Civil Registration Services be directed to issue a post-adoption Certificate of Birth in respect of the Child.
 - e. That the Court be please to make any or further orders it may deem necessary.
 - f. That the Guardian *ad litem* be discharged.
29. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 16TH DAY OF AUGUST, 2024.

NJOROGE BENJAMIN. K

JUDGE

In the presence of: -

Mr Mulwa h/b for Miss Kimaru for the Applicant



