



REPUBLIC OF KENYA



**In re Baby RW (The Child) (Adoption Cause E233 of 2024)  
[2024] KEHC 15376 (KLR) (Family) (29 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 15376 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
ADOPTION CAUSE E233 OF 2024  
PM NYAUNDI, J  
NOVEMBER 29, 2024  
IN THE MATTER OF THE CHILDREN'S ACT NO. 29 OF  
2022  
LAWS OF KENYA  
IN THE MATTER OF BABY RW (THE CHILD)  
AND  
IN THE MATTER OF AN APPLICATION FOR ADOPTION BY  
GHB (APPLICANT)**

**JUDGMENT**

1. Vide Originating Summons, dated 11<sup>th</sup> October, 2024 the Applicant GHB herein seeks the following orders that,
  - i. She be authorized to adopt the child RW who is a Kenyan Citizen, born on the 17<sup>th</sup> of October, 2007.
  - ii. The Child be known as RWH
  - iii. MHMB of Kenyan National Identity Card Number 11XXXX99 be appointed as Legal Guardian of the Child RW.
  - iv. The Registrar General be directed to enter this adoption into the Register of Adoptions and subsequent Birth Certificate do issue by the Registrar of Births and Deaths.
  - v. The Director of Immigration be authorized to issue the Child RWH with a Kenyan Passport.
2. The matter proceeded to hearing viva voce. The Applicant is single and Kenyan Citizen currently residing in the State of New York in the United States of America. She currently works for [particulars withheld] and the [particulars withheld]. She also has a residence in Valley Arcade, Nairobi.



3. She does not have her biological children. She is cousin to the minor's biological mother who is deceased hence this is a Kinship Adoption provided for under Section 193 of the *Children Act* 2022.
4. The minor is 16 years of age. Soon after the death of her mother, the minor was taken to stay with Applicant's mother LWB in Naromoru. The Applicant took the custody of the child in 2015, she was appointed as Legal Guardian in Children's Case 28 of 2019 in Nanyuki Children's Court on the 15<sup>th</sup> January, 2020. The Applicant then took the minor to New York. The minor was given G4 Visa as a dependent Visa for the 4 years.
5. The minor attends school at [particulars withheld] High School in New York. In the USA the Applicant is able to provide the minor with the best medical care.
6. The Applicant has means to provide for the child financially and that she understands the legal implications of an adoption order which is not reversible.
7. The Applicant further stated that her wishes are to legalize the relationship with the child through adoption to enable the child get travel documents and join her permanently in the USA.
8. The child was offered for adoption by her grandmother, LWB who approached the Kenya Children's Adoption Society and was properly counselled and taken through an Explanatory Memorandum after which the Applicant signed a Certificate of Acknowledgement as per the Annexed letter dated 2<sup>nd</sup> September, 2024.
9. The child herein (Baby RW) the subject of the present adoption proceedings was born to Applicant's 1<sup>st</sup> cousin THK (Herein referred to as the Biological Mother) on 17<sup>th</sup> October, 2007 at Karatina D. Hospital. Upon demise of the minor's mother, her grandmother assumed the role of parental until the minor was 6 years old. The minor's biological father whereabouts is unknown. The Applicant has since been the care giver of the child. The child was present in Court online platform where she averred that she was aware that her Aunt (Applicant herein) wishes to adopt her. She further averred that she has been living with the Applicant in New York and subsequently, consented to the Adoption proceedings.
10. This being a Kinship adoption, the Applicant made legally necessary applications to be allowed to adopt the child and meets the Kinship Adoption requirements. The minor's Grandmother had sworn an affidavit of consent expressing her willingness for the process of this adoption to continue and to have the child adopted by the Applicant.
11. Upon an assessment and approval by Kenya Children's Home Adoption, consent from the minor's Grandmother, the consent from the minor, the minor was declared free for adoption by the same Adoption Society Vide a Certificate of Freeing Serial No.1009 dated 18<sup>th</sup> September, 2024 this is Pursuant to Section 184 (1) of the *Children Act* Cap 141 of the Laws of Kenya.
12. VMJ was appointed by this Court on 14<sup>th</sup> November, 2024 this as the child's guardian ad litem. She filed her report pursuant to Section 188 of the *Children Act* Cap 141 of the Laws of Kenya, in which she stated that the Applicant has demonstrated great parental love and excellent parental commitment and willingness to continually support the child. She also stated that the child is now seventeen (17) years old. She is of good health and is outgoing, she interacts well with the parent on an individual and collective basis. It's also her disposition that the Applicant wants the best for the child as the Applicant has created a strong bond with the child and it will be in the best interest of the minor therefore recommended the adoption of the minor.
13. Pursuant to Section 102 of the *Children Act* 2022, the Directorate of Children Services and the Guardian Ad Litem prepared their respective reports. WI Assistant Director, Children Services



presented report prepared and presented a favourable report. W observed that the Applicant has been living with the child in the USA where she works and the child is able to attend a school that address her special needs as well as access proper medical attention. The Applicant is financially able to take care of herself as well as the child. Further, the child is an orphan as well as intellectually disabled and therefore this adoption offers her a mother and a home as well as access to better healthcare and specialized school. It is therefore in her best interest and recommends the adoption.

14. MHMB (the proposed Legal Guardian) She is the Applicant's sister and confirmed that she has consented to the appointment as legal guardian and she is prepared to assume parental responsibilities should circumstances require.
15. In addition, other Statutory Reports filed stated that the Applicant is financially and emotionally capable of providing the child with care, protection and education. She has no criminal record as annexed copy PCC-EGSXXXAW5. This Court has evaluated the facts of this adoption. It is evident that the Applicant has fulfilled all the legal requirements relative to the adoption of the child.
16. 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 the her.
17. The consent of the biological parents of the child was dispensed. This Court has satisfied itself that the Applicant is qualified and able to take care of the child.
18. 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.
19. This Court is alive to the Jurisdiction of the High Court vide Article 165 of the *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 United Nations 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**

20. 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.



21. Consequently, I allow the prayers sought in the Application dated 23<sup>rd</sup> August, 2023 and order as follows:

- I. The Applicant GHB is hereby allowed to adopt BABY RW (A Child).
- II. Henceforth, the child shall be known as RWH.
- III. Her date of birth shall be 17<sup>th</sup> October, 2007.
- IV. She is presumed to be a citizen of Kenya by birth.
- V. MHMB shall be the Legal Guardian of the child.
- VI. The Registrar General to enter this order in the Adoption Register.
- VII. The Director Immigration is authorized 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 29<sup>TH</sup> NOVEMBER, 2024.**

**P. NYAUNDI**

**JUDGE**

In presence of: -

Fardosa Court Assistant

