



**In re IAM (Minor) (Adoption Cause E225 of 2024)  
[2024] KEHC 15932 (KLR) (Family) (19 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 15932 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
ADOPTION CAUSE E225 OF 2024  
SN RIECHI, J  
DECEMBER 19, 2024**

**IN THE MATTER OF**

**NMW ..... 1<sup>ST</sup> APPLICANT  
NAOM ..... 2<sup>ND</sup> APPLICANT**

**JUDGMENT**

1. The Applicants, NMW and NAO are in a monogamous marriage which was solemnized on 31<sup>st</sup> December 2010 at ACK St. Francis Church Karen as evidenced by a copy of their marriage certificate serial number 64XX61 attached to the application.
2. The 1<sup>st</sup> applicant is a female adult of sound mind and a Kenyan/Australian Citizen aged 41 years old born 27<sup>th</sup> November 1981 as evidenced by a copy of her passport number BK3XXX85 attached to the application. The 2<sup>nd</sup> applicant is a male adult of sound mind and a Kenyan/ Australian Citizen aged 47 years old born on 1<sup>st</sup> March 1977 as evidenced by a copy of his passport number PBXXXXX23 attached to the application. They both hold dual citizenship.
3. The applicants have filed an originating summons dated 15<sup>th</sup> October, 2024 by which the applicants seek the following orders: -
  - i. That the applicants NMW and NAM be authorized to adopt the minor, IA upon the making of an adoption order by this Honorable Court.
  - ii. That an Adoption Certificate be issued in respect of the minor, IAM.
4. The Summons was supported by the statement of even date sworn by the applicants and an Affidavit in support.
5. The applicants live and work in Melbourne, in the State of Australia and they have one biological daughter.



6. The applicants stated they opted to have the child herein through gestational surrogacy due to medical reasons on the part of the 1<sup>st</sup> applicant.
7. From the evidence on record the minor was born in Nairobi on 07/03/2024 at [particulars withheld] Healthcare, Kiambu Road through a Gestational Surrogacy arrangement between applicants and the surrogate, CAW as evidenced by a copy of the Surrogacy Agreement dated 3<sup>rd</sup> June 2023 attached to the application.
8. The applicants stated that they have had custody of the minor since birth on 07/03/2024 and with consent from the surrogate mother they took him into their actual custody. The applicants attached to the application a copy of the surrogate's national identification card and a copy of consent by surrogate relinquishing her claim over the minor and a copy of her certificate of Acknowledgement.
9. The applicants stated that they have since the birth of the minor undertaken a DNA test whose results have confirmed that the 2<sup>nd</sup> applicant has a genetic link to the minor and the Gestational Surrogate has none as evidenced by the copies of the DNA test attached to the application.
10. The applicants averred that the Birth Notification was issued in the name of the Gestational Surrogate as per the provisions of the Births and Deaths Registration Act, Kenya that recognizes the woman who brings forth to be the mother, despite the non-existence of a genetic link. The applicants annexed a copy of the Birth Notification in support.
11. The 1<sup>st</sup> Applicant NMW was present in court and testified that she is 44 years old. She is a nurse by profession working in Australia in [particulars withheld] in Melbourne Australia. She testified that at the moment she stays in Runda. She testified that she wants to be granted full custody of IAM. She stated that she is married to NAOM.
12. The 2<sup>nd</sup> applicant NAOM testified that he is 47 years old and married to the 1<sup>st</sup> applicant in 2010. He testified that he want to be granted custody of I. He testified that they entered into a surrogacy agreement with Caroline and the agreement is dated.....He stated he was the male donor and the children were born on 27.3.2024. He testified he want the court to grant him the right to adopt I and I. They were born on 27.3.2024.
13. The applicants stated they have a nine year old biological daughter, SSA and she has given her consent to the adoption as evidenced by a copy of her birth certificate and consent annexed to the application.
14. From the evidence on record Hon. JAA has signed a Guardianship Confirmation that she is ready to act as the minor's guardian in the event that both or one of us is not available as evidenced by a copy of consent for her Guardianship Confirmation attached to the application.
15. Prior to the hearing of the adoption application, Kenya Children's Home Adoption society prepared and filed a report dated 12<sup>th</sup> November 2024. They also issued a Certificate serial number 1XX4 declaring the child free for adoption as evidenced by the copies of report and certificate declaring a child free for Adoption attached to the application.
16. The applicants stated that they have no previous criminal record and no pending criminal prosecution as evidenced by their respective police clearance certificates attached to the application.
17. The applicants are both physically and emotionally fit and healthy to parent, love and care for the child as evidenced by copies of their Medical reports attached to the application.
18. The applicants are financially stable and they are therefore able to provide fully for the child's need as evidenced by copies of their financial documents attached to the application.



19. The guardian ad litem Ms. JM filed a report dated 11<sup>th</sup> January 2024 which was favourable and recommended the adoption of the child by the Applicants.
20. Ms. Winfred Ikinya, Assistant Director conducted home visits and established that the applicants are financially and emotionally capable of providing for the upkeep and education of the child and filed a report dated 19<sup>th</sup> November 2024 recommending the adoption for reasons that the child stands to gain from the opportunities provided by becoming the son of the Applicants and that the Applicants have fulfilled the statutory requirements.
21. The legal guardian Ms. JAA consented to be appointed as legal guardian of the child and she filed a letter of consent attached to the application.
22. This is a surrogate adoption and from the record the Applicants have fulfilled all the legal requirements relating to the adoption of the child. The child was in court during the virtual hearing and appeared to have bonded well with the Applicants.
23. I have examined the evidence herein and best interest of the child as required in Article 53 (2) of the Constitution and Section 8 the Children's Act, 2022. I find that it is in the best interest of the child to be adopted by the Applicants. I therefore allow the prayers sought in the amended originating Summons dated 15<sup>th</sup> October 2024 Order as follows:
  - i. The Applicants NMW and NAOM are hereby allowed to adopt IAM,
  - ii. JAA is hereby appointed the legal guardian of the child.
  - iii. The Registrar General is directed to enter this Order in the Adopted Children Registry.
  - iv. The guardian ad litem is hereby discharged.

**DATED AT NAIROBI THIS 19<sup>TH</sup> DAY OF DECEMBER 2024.**

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**S. N. RIECHI**

**JUDGE**

