



REPUBLIC OF KENYA



**In re MG aka ST aka MGA (Minor) (Adoption Cause 71 of 2018)
[2023] KEHC 3276 (KLR) (Family) (23 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 3276 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE 71 OF 2018
EKO OGOLA, J
FEBRUARY 23, 2023**

JUDGMENT

1. Before this court is the originating summons dated June 12, 2018 by which the applicant NWK prays for the following orders: -
 - a. That AN be appointed as guardian ad litem of the minor Baby MG aka ST aka MGA
 - b. The Director of Children’s Services evaluates the Applicant and files the report.
 - c. That the applicant be authorized to legally adopt MG aka ST aka MGA (Herein referred to for all common interest and purpose as the minor) who will be known RKW
 - d. That JNK be appointed as next of kin and legal guardian to the minor herein.
 - e. That the infant herein be presumed to be a Kenyan citizen
 - f. That the Registrar General do make the appropriate entry of RKW the minor herein in the Adopted Children’s Register.
2. The originating summons was supported by the applicant’s affidavit and statement. It was further canvassed by way of viva voce evidence in open court.
3. The applicant as PW1 took the stand and testified that she engages in a business where she makes approximately Kshs. 150,000/= per month. She is single and has no children. She testified that the minor was placed with her on November 13, 2013.
4. PW2 was LNW the guardian ad litem. She testified that she has known the applicant for 15 years and that she has visited the applicant and the minor and hence recommends the adoption.
5. PW3 was BWK the applicant’s elder sister who prays to be legal guardian of the child.
6. PW4 was DK an officer from the Directorate of Children Services. He testified that after assessing the applicant, they recommend the adoption.



7. PW5 was FN a representative from the Child Welfare Society, an Adoption Agency. He testified that they have no reservations to the applicant adopting the child.

Determination

8. I have considered the Summons before me, the evidence on record as well as the various reports filed in court.
9. The child was born on November 26, 2012 to his biological mother MGG. Before the birth of the minor, on November 2, 2012, MGG made a preliminary visit to Child Welfare Society of Kenya with the intention of relinquishing her parental rights. She cited reasons of inability to care for the child adequately. She added that the child's father had denied responsibility and absconded. MGG was subsequently counselled over the need for family preservation and on the legal implications of such a decision. However, on June 28, 2013, MGG voluntarily proceeded to file a consent to have the child adopted.
10. On September 16, 2013 under Protection and Care Case No. 332 of 2013, the Children's Court at Milimani committed the child to Mama Ngina Kenyatta Children's home for care and protection.
11. The prerequisites for adoption are set out in section 156(1) of the [Children's Act, 2001](#) which stipulates as follows: -

“ 159(1) No arrangement shall be commenced for the adoption of a child unless the child is at least six (6) weeks old and has been declared free for adoption by a Registered Adoption Society in accordance with the Rules prescribed in that behalf.”
12. At the time when this adoption process commenced, Baby MG was almost six years of age which is above the six (6) week age limit provided for by law. On June 25, 2014, The Child Welfare Society of Kenya which is a registered Adoption Agency declared the child free for adoption. They have annexed to their report A Certificate of Declaring a Child Free for Adoption serial No. xxxx. I am therefore satisfied that the legal prerequisites for an adoption order have been met.
13. The duty of this court is to analyze the material before it and determine whether the Applicant is a suitable adoptive parent. The applicant is a Kenyan citizen as evidenced by the copy of her National Identify Card. She is a committed Christian and intends to raise the child in the Christian Faith. She is also gainfully employed and can therefore sufficiently provide for Baby MG. The Applicant has annexed to the Summons copies of her Bank statements as proof of her financial capability. The Applicant has also annexed copies of her Clearance Certificate issued by the Kenya Police Service as proof that she has no criminal record.
14. The applicant has appointed BWK to be Baby MG's legal guardian in the event that the Applicant will be unable or unavailable to provide for the child.
15. Finally, the applicant told the court that her larger family is supportive of her intention to adopt Baby MG. From the material availed to this court, I am satisfied that the Applicant is a suitable adoptive parent.



16. In deciding upon any matter involving a child, Courts are obliged to give priority to the best interest of the said child. section 4(2) of the Children Act 2001 stipulates as follows:-
- “(2) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration”
17. The biological mother of the child relinquished her parental rights over the child. Baby MG could have faced an uncertain life. Therefore, this adoption allows him the opportunity to be raised in a stable and loving home environment.
18. A home visit was conducted by the Adoption Society, the guardian ad litem, and the Children’s Services. All were positive and all recommended the adoption. There are pictures of the child on record and he seems like a healthy and cheerful child.
19. All in all, I find that this adoption does serve the best interests of the child. Accordingly, I do allow the Originating Summons dated June 12, 2018 and make the following orders:-
- a. The Applicant, NWK is authorized to adopt the child known as Baby MG aka ST aka MGA.
 - b. Upon adoption, the child shall be known as RKW.
 - c. The guardian ad litem, LNW, is hereby discharged.
 - d. BWK is hereby appointed as the legal guardian of the child.
 - e. The Registrar General is directed to make the relevant entry in the Adopted Children Register.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 23RD DAY OF FEBRUARY 2023

E.K. OGOLA

JUDGE

In the presence of:

Mr. Githire for the Applicant

Gisiele Muthoni Court Assistant.

