



REPUBLIC OF KENYA



**In re AW (Child) (Adoption Cause E052 of 2021)  
[2023] KEHC 17381 (KLR) (Family) (28 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 17381 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
ADOPTION CAUSE E052 OF 2021  
MA ODERO, J  
APRIL 28, 2023  
IN THE MATTER OF CHILDREN'S ACT NO 8 OF 2001  
AND  
IN THE MATTER OF ADOPTION OF BABY AW (THE CHILD)**

**IN THE MATTER OF**

**DKK ..... 1<sup>ST</sup> APPLICANT**

**VK ..... 2<sup>ND</sup> APPLICANT**

**JUDGMENT**

1. Before this court is the originating summons dated May 20, 2021 by which the Applicants DKK and VK seek the following orders:-
  - “1. Spent
  2. That the applicant herein be authorized to adopt AW, the child herein.
  3. That upon adoption, the child be known as MNK
  4. That the Registrar General be directed to enter this adoption into the Adoption Register.
  5. That the child be presumed to be a Kenyan citizen by birth.
  6. That the court be pleased to make any further orders it deems necessary.
2. The application is supported by the statement of even date sworn by the Applicants. The matter was canvassed by way of vive voce evidence on the virtual platform.



3. The Applicants are a couple who got married to each other in the year 1991. The couple had three (3) biological daughters two (2) of who unfortunately passed away due to a tragic road accident passed away. They remain with a surviving daughter who is now aged thirty (30) years old. The couple now wish to adopt the subject child in order to expand their family and to provide a needy child with a home.
4. The Applicants confirms that they both understand the legal implications of an adoption order. They undertake to accord to the subject child all rights due to a biological child including the rights to inherit.

### **Analysis and Determination**

5. I have considered the application for adoption, the evidence adduced in support thereof as well as the various reports filed in court.
6. The prerequisites for before an adoption order can be made are set out in section 184 (1) (a) and (b) of the *Children's Act 2022*: -
  - “(1) A person shall not commence any arrangements for the adoption of a child unless—
    - (a) the Council, in accordance with the rules, has declared the child free for adoption; and
    - (b) the child has attained the age of six weeks.”
7. The Subject child is a girl child who is believed to have been born on March 9, 2015 – Accordingly the child is now aged eight (8) years old and is well above the six (6) week age limit provided for in law.
8. KKPI Adoption Agency which is a registered Adoption Agency have annexed to their report a copy of their Certificate Serial No xxx dated February 2, 2015 declaring the child Free for Adoption. I am therefore, satisfied that the legal prerequisite for an adoption order have been met.
9. The duty of this court is to analyze the evidence on record to determine whether the Applicants are suitable adoptive parents. The Applicants are both citizens of Kenya. They have annexed copies of their National Identity Cards as proof of citizenship (Annexure ‘AW10’)
10. The Applicants are a married couple who initially got married under Kikuyu Customary Law. They later solemnized their union vide a ceremony conducted at the Registrar’s Office on March 28, 2002. A copy of their Marriage Certificate Serial No 97xxx9 is annexed to the summons (Annexure ‘AW 11’).
11. The Applicants have one child who is an adult aged thirty (30) years. They wish to adopt the subject child in order to expand their family and out of a desire to provide a needy child with a home.
12. The Applicants are both gainfully employed. Together they run a school named [Particulars Withheld] in Zimmerman on Plot No 11xx. Annexed to the summons is a copy of their permit issued by the Nairobi City County (Annexure ‘AW 13’).
13. The Applicants also own property in Donyo Sabuk and at Daykio Plantations. They have annexed copies of the Documents as well as copies of bank statements for an account held at Absa bank (Annexure ‘AW 17’). I am satisfied that the Applicants are financially stable and have sufficient means to provide for the child.
14. The Applicants are both Christians and intend to raise the child in the Christian Faith. They have annexed a copy of a letter of recommendation dated July 13, 2018 written by Pastor W of the [particulars withheld] Baptist Church.



15. The Applicants were both examined by a doctor and were found to be both physically and mentally fit. They have each annexed a copy of a clearance Certificate issued to them by the Directorate of Criminal Investigation (Annexure 'AW 15') proving that neither has a criminal record.
16. The Applicants state that their family are aware of and support their intention to adopt the subject child. The Applicants daughter JW testified before the court. She confirmed that she was aware of and consented to the adoption of the subject child by her parents.
17. The Applicants have appointed their daughter and her husband as the legal guardians of the child. The proposed legal guardian JW and RM have both signed the consent dated July 17, 2018 (Annexure 'AW 14').
18. All in all, I am satisfied that the Applicants are suitable adoptive parents.
19. The subject child is believed to have been born on March 9, 2015. On October 9, 2016 at the age of about one and a half (1½) years the child was found wondering about alone at Kahawa West Bypass. Two good Samaritans rescued the baby and reported the abandonment at Kiambu Police Station vide OB Number 17 of October 9, 2016. Thereafter on January 31, 2017 the Kiambu Children's Court committed the child to Mogra Rescue Center for Care and Protection. On October 16, 2020, the child was released into the custody of the Applicants under a Foster Care Agreement.
20. Article 14 (4) of the [Constitution of Kenya 2010](#) provides that: -
  - "(4) A child found in Kenya who is, or appears to be less than eight years of age and whose nationality and parents are not known, is presumed to be a citizen by Birth."
21. The child in question was found abandoned in the Kahawa area of Kiambu County within the Republic of Kenya. The child is therefore, presumed to be a Kenyan citizen by birth.
22. Efforts by authorities to trace the biological mother/relatives of the child has not been successful. To date no person has come forward to claim the child. A final Police letter dated September 8, 2017 is annexed to the summons (Annexure 'AW 3').
23. Given the facts of child's abandonment there exists no known person from whom consent for the adoption can be sought and/or obtained. In the circumstances, I waive the requirement for consent in line with Section 187 (1) (a) of the [Children Act 2022](#).
24. In deciding upon any matter involving a child, courts are obliged to give priority to the best interests of the said child. Section 8 (1) of the [Children Act 2022](#) provides:-
  - "(8). In all actions concerning children, whether undertaken by public or  
(1) private social welfare institutions, courts of law, administrative authorities or legislative bodies—
    - (a) the best interests of the child shall be the primary consideration;" (own emphasis)
25. This is a child who was abandoned as a mere toddler. She faced an uncertain future living in children's homes and other similar institutions. This adoption allows the child the opportunity to be raised in a loving and stable home environment.



26. I was able to see the child online. She was a bright and articulate girl who confidently answered all the questions put to her by the court. The child appeared healthy and was obviously comfortable in the company of the Applicants.
27. A home visit was conducted on November 25, 2022. The Applicants reside in [particulars withheld]. The home was found to be spacious and within a secure gated community. The home was found to be a conducive environment for the child.
28. I have carefully perused the reports filed by the Adoption Agency, the Guardian *ad litem* and the Director Children's Services. All three reports were positive and all recommend the adoption.
29. Finally, I am satisfied that this adoption serves the best interest of the subject child. Accordingly, I allow this application and make the following orders:-
  1. The Applicants DKK and VK are authorized to adopt the child known as AW.
  2. Upon adoption the child will be known as MNK.
  3. The child is presumed to be a Kenyan Citizen by birth and is entitled to all the rights and privileges thereto.
  4. The Registrar – General is directed to make the relevant entry in the Adopted Children's Register.
  5. JWK and RM are appointed as the legal Guardians for the child.

**DATED IN NAIROBI THIS 28<sup>TH</sup> DAY OF APRIL, 2023.**

.....  
**MAUREEN A. ODERO**  
**JUDGE**

