



**In re Baby EP (Adoption Cause E140 of 2022)
[2023] KEHC 3869 (KLR) (Family) (27 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 3869 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E140 OF 2022
DKN MAGARE, J
APRIL 27, 2023
IN THE MATTER OF THE CHILDREN ACT, 2022
IN THE MATTER OF BABY EP**

IN THE MATTER OF

**SMW 1ST APPLICANT
LWM 2ND APPLICANT**

JUDGMENT

1. SMW and LWM have come before me craving that I allow them adopt a little Angel, baby EP .
2. They started their journey as husband and wife. The journey has brought them here before the court to have their child.
3. The director of children services, represented in court by carol Olilo from the directorate of children service recommends the adoption.
4. Buckner Kenya adoption society freed the child for adoption on August 20, 2021. The child was placed with the applicants on October 19, 2021.
5. Mary Kamiri was in court as PW5 to confirm this. They recommend adoption. CKR, the Guardian ad Litem produced his report. The report is dated December 28, 2022, was favourable.
6. The parties testified and confirmed to me that they know adoption is irreversible. They are 49 years and 42 years respectively. The proposed guardian ad litem also testified that she is ready and willing to step in as the Legal guardian.



7. The Applicants meet the age, financial and social requirements for adoption under Section 183 of the *Children's Act*. The applicant meets the Pre-requisites for Adoption under section 184 of the Children's Act, which provides as doth: -
- (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.
 - (2) A person, including a parent, guardian or adoption society, shall not, prior to the making of an adoption order, entrust a child to the care, possession or control of any person not qualified to adopt a child in accordance with this Act.
 - (3) An applicant shall not preselect a prospective adoptive child except—
 - (a) In the case of kinship adoption;
 - (b) Where the applicant is a foster parent seeking to adopt a fostered child under the applicant's care.
 - (4) The Secretary shall monitor and submit reports to the courts on the wellbeing of a child who is subject to adoption proceedings.
 - (5) Any person who contravenes subsections (1) or (2) of this section commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine not exceeding one million shillings, or to both.
8. The Applicant is not disqualified by dint of section 186(6) of the children's act from adopting. The section provides as doth: -
- The Court shall not make an adoption order in favour of an Applicant or joint Applicants if the Applicant or joint Applicants, or any of them—
- a) Is of unsound mind within the meaning of the *Mental Health Act* (Cap 248);
 - (b) Is incapable of exercising proper care and guardianship of a child;
 - (c) Has been convicted by a Court of competent jurisdiction for any of the offences specified in the Third Schedule or similar offences;
 - (d) In the case of joint Applicants, if the Applicants are not married to each other;
 - (e) Is a sole male Applicant except where the Applicant is a biological relative of the child; or
 - (f) Is a foreign Applicant except where the Applicant is a biological relative of the child.
9. The Applicants are not disqualified from adopting pursuant to Sections 186 of the Children's Act. The child is also available for adoption. The best interest of the child require, may demand that I allow the application. The originating summons dated August 16, 2022, is hereby allowed in the following terms: -
- a. SMW and LWM, be allowed to adopt baby EP , a minor to be known as JBM.
 - b. The Registrar General be directed to enter this adoption in the Registrar of adoption.
 - c. AK be appointed as a legal guardian of the minor herein.



- d. The guardian ad litem be discharged.
- e. The Registrar of births and deaths, be directed to issue a birth certificate to the minor.
- f. The consent of biological parents be dispensed with.
- g. The director of Immigration be authorized to issue a passport to the minor.
- h. The date of birth be declared as December 3, 2019, in Nairobi Kenya.
- i. This file be sealed and closed.

DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 27TH DAY OF APRIL, 2023.

Judgment delivered through Microsoft Teams Online Platform.

DENNIS KIZITO MAGARE

JUDGE

In the presence of:

Miss Kemunto for the Applicant

Court Assistant - Firdaus

