



**In re JL aka EKM (Child) (Adoption Cause E170 of 2022)
[2023] KEHC 3571 (KLR) (Family) (27 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 3571 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

ADOPTION CAUSE E170 OF 2022

DKN MAGARE, J

APRIL 27, 2023

IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF APPLICATION FOR ADOPTION OF

BABY JL AKA EKM.....

THE CHILD

BY

IN THE MATTER OF

JW 1ST APPLICANT

JM 2ND APPLICANT

JUDGMENT

1. This matter came before me on April 13, 2023 during the rapid result initiative. I Heard witnesses and reserved Judgment for today April 27, 2023.
2. On December 1, 2022, Honourable Justice SN Riechi had allowed Chamber Summons Application dated September 20, 2022. The court appointed PKS as the Guardian ad litem. The Guardian ad litem and the secretary of children services were to file reports by March 30, 2023. The Deputy Registrar placed the matter before me on April 13, 2023, where I heard witnesses and reserved Judgment for today.
3. The Applicant testified that they are ready for the adoption Peter Ndotono from the adoption Society stated that the child was freed for adoption on February 16, 2022 vide certificate No 827. They recommended the adoption. Kenya Children’s Homes Adoption Society prepared the declaration report, freely certificate, freeing summary, care against and case committee agreement and case



committee ratification forms for the baby. The child directorate of children service prepared its reports as ordered. and recommended the adoption.

4. I have to exercise my discretion whether to allow this adoption I have seen the income and financials by the Applicants are health. The recommendations show that they are suitable parents. The Appellants have a requisite age difference and meet the minimum threshold, as to age. They are qualified by dint of Section 184 and 183 of the *Children's Act* to adopt. Section 184 provides as follows: -

Pre-requisites for Adoption.

- (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.

5. Further the Applicant are not disqualified by dint of Article Section 186 of the *Children's Act*. I am inclined to grant the originating summons dated September 20, 2023, which provides as follows: -

6. 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.



Determination

7. The upshot of the foregoing is that all the originating summons dated September 20, 2022 in the following terms: -
- a. The Applicant JMM and JWN be authorized to adopt a child known as baby JL to be known as EKM.
 - b. That PNN and JNK be appointed as the Legal guardian of the child.
 - c. The Guardian ad litem be discharged.
 - d. The child be declared to be born on July 22, 2022 at Kiambu Level 5 Hospital
 - e. The child be presumed as Kenyan by birth.
 - f. The consent of the Biological parents be dispensed with.
 - g. The Director General of Immigration be authorized to issue a passport to the child.
 - h. The Registrar General do enter the adoption in the register of adoptions.
 - i. The Registrar of births and deaths be directed to issue a birth certificate to the child.
 - j. This file is 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 OF THE HIGH COURT, MOMBASA

In the presence of:

No appearance for the applicant

Court Assistant - Firdaus

