



REPUBLIC OF KENYA



KENYA LAW
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**In re NKW (Child) (Adoption Cause E026 of 2022)
[2023] KEHC 18186 (KLR) (31 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 18186 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
ADOPTION CAUSE E026 OF 2022
G MUTAI, J
MAY 31, 2023
IN THE MATTER OF THE CHILDREN'S ACT 2001
AND
IN THE MATTER OF BABY NKW (THE CHILD)**

BETWEEN

LMM 1ST APPLICANT

EHJ 2ND APPLICANT

AND

LITTLE ANGELS NETWORK RESPONDENT

JUDGMENT

1. The applicants herein moved this honourable court vide originating summons dated December 15, 2022 seeking for orders that: -
 - a. Pursuant to article 14(4) of the Constitution of Kenya, 2010 and section 11 of the Children Act, 2001, this Honourable Court be pleased to declare N.K.M (the child) a Kenyan citizen by birth;
 - b. Pursuant to the provisions of section 159 Of The Children Act, 2001, this honourable court be pleased to dispense with the requirements of the consent to adoption as required by the provisions of section 158 of the Children Act, 2001;
 - c. The applicants LMM. and EHJ be authorized to adopt N.K.W;
 - d. Upon making of the adoption order, the child to be known as N.K.M.
 - e. Upon making of the adoption order GV & VMJ be appointed legal guardians of the child as provided for by the provisions of section 164 of the Children Act, 2001.



- f. Upon making of the adoption order, the Registrar General do make an entry recording the adoption and the date of birth of the child as June 28, 2014 in the Adopted Children Register as provided for by section 170 of the Children Act, 2001.
- g. The costs of this application be costs in the cause.
2. The application is supported by the averments in the statement in support thereof sworn on December 15, 2022. The applicants are Kenyan citizens born in 1986 and 1989 respectively. They got married to each other in 2014 and officiated their marriage on August 26, 2022. They are blessed with two children namely IM born on August 14, 2017 and EG born on January 18, 2020. The motivation to adopt the baby has been ignited by the desire to give love, home and hope to the baby who has been part of their lives since he was 3 years old. Regarding their occupation, the 1st applicant is a cholera response consultant with Save the Children Fund while the 2nd applicant is a nurse working with Mombasa County.
3. The child herein is estimated to be born on June 28, 2014, to DMK and VMJ who gave him up for adoption on grounds that they are financially incapable of taking care of the baby and also that the baby has bonded well with the applicants. DMK and VMJ willingly surrendered the child for placement and gave their final consent on September 16, 2022 and September 19, 2022 respectively. The child is a nephew to the applicants thus making this adoption a kinship adoption.
4. Consequently, in its meeting held on October 7, 2022, the case committee of Little Angels Network declared the child free for adoption and a Certificate S/No.002290 was issued.
5. Upon instituting these proceedings, PKN was on March 13, 2023 appointed guardian ad litem. The Children's Officer and guardian ad litem were directed to file their respective social inquiry reports within 30 days respectively.
6. Preceding the hearing, the County Coordinator for children services Mombasa County filed his report dated May 9, 2023 recommending the adoption. Equally the guardian ad litem filed her report dated May 10, 2023 recommending the adoption.
7. During the hearing the applicants urged the court to allow the application to enable them adopt the baby and stated that they understood the consequences of adoption and that it is permanent.
8. I have considered the application herein, materials in support and evidence by various witnesses and the issues that emerge for determination are; whether the baby is available for adoption, whether the applicant is fit to adopt the baby and most importantly whether the adoption is in the best of the child.
9. The subject baby is estimated to be born on June 28, 2014, to DMK and VMJ who gave him up for adoption on grounds that they are financially incapable to take of the baby. DMK and VMJ willingly surrendered the child for placement and gave their final consent on September 16, 2022 and September 19, 2022 respectively. The child is a nephew to the applicants and both parents have given consent to his adoption thus making this adoption a kinship adoption.
10. On the baby's nationality, it is clear the baby was born in Garissa PGH and currently staying with the applicants at [Particulars withheld] Apartments Bamburi, Mombasa County all within the Republic of Kenya. The Constitution article 14(1) provides: A person is a citizen by birth if on the day of the person's birth, whether or not the person is born in Kenya, either the mother or father of the person is a citizen. The child herein was born in Kenya and his parents are both Kenyans thus in view of this provision the child herein is presumed to be Kenyan citizen by birth.



11. The child is above 6 weeks and below 18 years which provision falls within the age bracket of any adoptive baby pursuant to section 184(1) (b) of The *Children's Act* 2022. Further section 185(1) does recognize any child who is resident in Kenya whether born in Kenya or not to be eligible for adoption. I have no doubt the child is fit for adoption.
12. Concerning the applicants' suitability, they are Kenyan citizens thus qualifying this local adoption. The 1st applicant is 37 years old while the 2nd applicant is 34 years old which places them under the age bracket of not less than 25 years or more than 65 years for an adoptive parent in compliance with section 186(2) (a) of the *Children's Act*. The applicants have been described as financially stable as the 1st applicant is a consultant and the 2nd applicant a nurse with various assets as indicated in the Director of Children Services Report. They are caring, loving and Christian couple with no criminal record. Since the placement of the minor into their custody the child has fully bonded with them. They also understand the consequences of adoption and that it is permanent. They appreciate the role of a parent and admits they will treat the baby like their biological child.

In re JNA [2018] eKLR L.A.Achode, J (as she then was) stated that:-

“I have perused the entire record and find that the Applicants meet the social parameters that are considered relevant to their taking on parental responsibility and custody of the child in this matter, on a permanent basis as would be conferred by the adoption order sought.”

It's my view that the applicants have met the necessary requirements to adopt the baby.

13. On the question of whether the adoption is in the best interests of the baby, guidance can be drawn from article 53(2) of the *Constitution* and section 8(1) and (2) of The *Children's Act* 2022 which underscores the best interests of a child principal as the primary consideration before making any decision concerning a baby.

Am also guided by the decision of Nyakundi, J in the case of *In re B (BABY)* [2018] eKLR where he stated that,

“The purpose of Kenya's Constitution and Children's Act is to protect and promote the welfare of Children by providing them with stable family units. The fundamental concern therefore in every adoption cause provision is of the best interest of that very child...

It is that family unit that the *Constitution* contemplates under article 45 which also has to take responsibilities in fulfilling the obligations enjoined in article 53 of the same constitution.”

14. The child herein was surrendered willingly for adoption by his parents DMK and VMJ. He is like any other child in need of parental care and guidance. He needs basic necessities like food, shelter, education and clothing. He has fully integrated with the applicant. It is obviously in the best interests of the child that this adoption application be allowed.
15. Accordingly, the application is allowed with orders that:
 - a. The child is declared a Kenyan citizen by birth;
 - b. The applicant is authorized to adopt BABY NKW who shall henceforth be known as NKM;
 - c. GV and VMJ are hereby appointed legal guardians of the child in the event the applicants are unavailable for any reason to take care of him;



- d. The Registrar General is directed to enter the adoption order herein and estimated birth date of the child as June 28, 2014 in the Adopted Children's Register; and
- e. The guardian ad litem is discharged.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 31ST DAY OF MAY 2023

GREGORY MUTAI

JUDGE

In the presence of:-

No appearance for the Applicants

Winnie Migot – Court Assistant

