



REPUBLIC OF KENYA



KENYA LAW
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**In re baby EH (Adoption Cause E216 of 2022)
[2023] KEHC 18696 (KLR) (Family) (26 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 18696 (KLR)

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

FAMILY

ADOPTION CAUSE E216 OF 2022

PM NYAUNDI, J

MAY 26, 2023

IN THE MATTER OF THE CHILDREN'S ACT NO.29 OF 2022

IN THE MATTER OF BABY EH

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION

IN THE MATTER OF

AMK 1ST APPLICANT

JWM 2ND APPLICANT

JUDGMENT

1. The Applicants, AMK and JWM, vide Originating Summons dated 27th October 2022 have made an application for the adoption of BABY DZ, the child herein.
2. The matter proceeded for hearing via viva voce evidence on the Teams virtual platform on the 11th May 2023.
3. The Applicants are both Kenyan Citizens and holders of Kenyan IDs Nos. xxxx and xxxx respectively and members of [Particulars Withheld] Church as evidenced by letter of Religious Affiliation dated 14th October 2021. They have solemnised their marriage under the Marriage Act on 29th April 2016 at [Particulars withheld] as per certificate of marriage serial no. xxxx.
4. They are both in gainful employment and have made available their payslips as evidence that they have the means to provide for the needs of the minor. They have also availed consents executed by close friends and family expressing support for their decision to adopt. They have had custody of the child since 17th June 2022.



5. The Applicants have employed a nanny who takes care of the minor while they are away at work. The Couple confirmed that they are both aware of the implications of the Adoption order and that they are prepared to assume full parental responsibility for the child.
6. JN was appointed Guardian Ad Litem on 19th January 2013. He confirmed that he had undertaken a home visit and observed that along with the child herein, the Applicants wish to adopt a second child. He observed that both children are well taken care of and have bonded well as a family. His report is dated 15th March 2023.
7. Winfred Ikinyais a representative from the Directorate of Children Services, she confirmed that the report dated 9th February 2023 was prepared by her colleague Nyaranga Odundo after conducting home visits and interviewing the Applicants.
8. The Report confirms that the Applicants have the financial stability to provide for the child. The report further confirms that the Children are well taken of and the family has bonded well. The Minor herein is being adopted alongside another child who is the subject of Adoption Cause E217 OF 2022.
9. The report finds that the Applicants have met all the legal requirements for Adoption as laid out in Sections 157 and Section 158 of the *Children Act*, 2022. The Report observes that granting the orders in favour of the Applicants is in the best interests of the Child.
10. Mary Kamiri representative from Buckner Kenya Adoption Society, confirmed they have prepared the report dated 17th March 2023. The report confirms that the minor was found abandoned in a pit latrine on 26th May 2021. A report was made at Ndumberi Police Post vide OB NO. xxxx.
11. The baby was rescued and taken to Kiambu Level 5 Hospital for treatment and was discharged on 23rd July 2021 to Limuru Children Centre for care and protection. Subsequently she was committed for a period of 6 months to Limuru Children vide Protection and Care order issued by Kiambu Children's Court Protection and Care Case No. E010 of 2021. The Committal order was later extended for a period of 3 years on 15th February 2022.
12. Up to the time the minor was placed with the Applicants on 17th June 2022 no one had come to claim her. The OCS Ndumberi Police Station by letter dated 25th May 2022, also confirmed that efforts to trace the parents and relatives of the minor were futile.
13. The minor was certified free for Adoption vide certificate serial no. xxxx issued on 3rd June 2022 by Buckner Kenya Adoption Services. It their opinion that granting the orders is in the best interests of the Child.
14. The proposed Legal Guardians, MNW and MG attended court and confirmed they are willing to take up the role of legal guardian. They live in Nairobi and are close family friends to the Applicants. They have two children, they fully appreciate the commitment they are making and confirm that they will play the role should the circumstances of the Applicants change.
15. After carefully assessing the records herein, I am satisfied that the applicants have fulfilled all the legal requirements relating to the Child's adoption. Section 186 of the *Children Act*, 2022 provides.
 - (1) The Court may make an adoption order on application by—
 - (a) a sole applicant; or
 - (b) two spouses jointly.
 - (2) The Court shall not make an adoption order in any case unless—



- (a) the applicant has attained the age of twenty-five years, but is not above the age of sixty-five years; and
 - (b) the applicant, or both of the applicants in a joint application, is more than twenty-one years older than the child.
- (3) The restrictions in subsection (2) shall not apply in any case where a sole applicant or one of the joint applicants is the mother, father or relative of the child.
16. The Applicants are aged 36 and 35 years respectively.
17. Article 53 of *the Constitution* of Kenya, 2010 provides the overarching principles which must apply whenever any decision concerning a child is to be considered. It states:

A Child's Best interests are of paramount importance in every matter concerning the child

18. This principle is restated in Under Section 8 of the *Children Act*, 2022 which provides

Best interests of the child.

- (1) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies—
 - (a) the best interests of the child shall be the primary consideration;
 - (b) the best interests of the child shall include, but shall not be limited to the considerations set out in the First Schedule.

Section 194(1)(c) of the Act also requires that if the adoption order is made the order will be in the best interests of the child, having regard to the wishes of the child, depending on the child's age and understanding, and to the ability of the applicant to maintain and educate the child;

19. In view of the foregoing the court is of the considered view that it is in the child's best interest to be adopted by the Applicant. Accordingly, I allow the prayers sought in the Originating Summons dated 11th November 2021 and order as follows:
- i. The Applicants AMK and JWM are allowed to adopt baby EH
 - ii. The Child to be known as ZWWM
 - iii. The minor's date of Birth 26th MAY 2021 and her place of birth is declared to be Kiambu County.
 - iv. The Child to be presumed to be a Kenyan Citizen by birth
 - v. MNW and MGM are hereby appointed as legal guardians of the Child
 - vi. The Registrar be and is hereby directed to enter this adoption into the Register of Adopted Children
 - vii. The Guardian Ad Litem is hereby discharged.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 26TH DAY OF MAY 2023.

P M NYAUNDI



HIGH COURT JUDGE

In the presence of.....

Court Assistant Karani

