



**In re EK alias DC (Baby) (Adoption Cause E002 of 2023)
[2023] KEHC 20057 (KLR) (Family) (30 June 2023) (Judgment)**

Neutral citation: [2023] KEHC 20057 (KLR)

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

ADOPTION CAUSE E002 OF 2023

PM NYAUNDI, J

JUNE 30, 2023

**IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001 IN THE MATTER
OF ADOPTION OF BABY EUNICE KATHERINE ALIAS DEBRA CHEBET AND
IN THE MATTER OF AN APPLICATION FOR ADOPTION BY INK & RGG**

IN THE MATTER OF

INK 1ST APPLICANT

RGG 2ND APPLICANT

JUDGMENT

1. The applicants, INK and RGG *vide* originating summons dated December 13, 2022 have made an application for the adoption of Baby EK alias DC the child herein. The applicants have been married since September 13, 2016 and have attached a copy of the marriage certificate serial number xxxxx. They wish to adopt the baby with the intention to grow their family.
2. The matter proceeded for hearing via *viva voce* evidence on the teams virtual platform on the June 22, 2023.
3. The applicants are Kenyan citizens and of the christian faith. They aver that they have the financial means and capability to take care of the child.
4. Both applicants are business persons, they have had custody of the child since March 30, 2022. They reside in xxx. They fully understand the consequences of an adoption order.
5. The child was found abandoned on October 12, 2019, in a pit latrine at Kiptagich Tea Estate. She was found by one EKN an officer attached to the camp as he went to answer to a call of nature. He called out for help from the public and the child was rescued. The matter was reported at Kiptagich Police Station where the incident was booked under OB No 0xxxx/2019. The matter was also reported at Kiptagich Police post under OB No 0xxxxx/2019.



6. Subsequently, the baby was rushed to Olenguruone Hospital for medical attention. The Sub-county children's officer at Kuresoi was informed about the incident on October 9, 2019 and he duly secured placement for her at xxx Baby Center in Ngata. The date of placement is October 2019.
7. The baby was committed to the same institution on October 30, 2019 for a period of three years, by the children's court at Molo by order *vide* Protection and Care Case No 65 of 2019. A final police letter from Kiptagich Police Station, dated June 17, 2021, further indicates that nobody has come forth to claim for the custody of the child since it was abandoned.xxxx Baby Center also reported that since was placed under their care, no one has come forth to claim for her custody.
8. Prior to the hearing of the adoption application, Buckner Kenya Adoption Services prepared and filed a report dated May 19, 2023 and issued a certificate serial No xxxxx declaring the child free for adoption.
9. On March 9, 2023, the court appointed a guardian ad litem Mr SK.
10. The guardian *ad litem*, Mr SK was present in court and presented his report dated May 23, 2023. He confirmed that he visited the applicants and the child at their home five times and observed that they have bonded well, and the child is well taken care of. He recommends that the applicants be allowed to adopt the baby.
11. An officer of the Department of Children Services, Nyaranga Odundo prepared a report dated May 23, 2023 and counter-signed by NW. The report established that the child was found on October 12, 2019, in a pit latrine at Kiptagich Tea Estate. She was found by one EKN an officer attached to the camp as he went to answer to a call of nature. He called out for help from the public and the child was rescued. The matter was reported at Kiptagich Police Station where the incident was booked under OB No xxxxx/2019.The matter was also reported at Kiptagich Police Post under OB xxxxxx/2019.
12. The report further documents that *vide* a final police letter from Kiptagich Police Station, dated June 17, 2021, indicates that nobody has come forth to claim for the custody of the child since it was abandoned on October 12, 2019 the police confirmed that neither the mother nor other relatives of the child had come back to claim the child. For this reason, the Department of Children Services confirms the child is free for adoption. The child was placed with the applicant on March 30, 2022.
13. The proposed legal guardian RKH attended court and confirmed she is willing to take up the role of legal guardian. She is the aunt to the second applicant and the sister to the second applicant's mother.
14. After carefully assessing the records herein, I am satisfied that the applicant has fulfilled all the legal requirements relating to the child's adoption. Section 186 of the [Children Act](#), 2022 provides.

The court may make an adoption order on application by-

- (1)(a) Sole applicant; or
- (b) Two spouses jointly.
- (2) The court shall not make an adoption order in any case unless-
 - i. the applicant has attained the age of twenty-five years, but is not above the age of sixty-five years; and
 - ii. 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.



15. The applicants are aged 63 years and 53 years respectively.
16. 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.

This principle is restated under section 8 of the Children Act, 2022 which provides

Best interests of the child. In all actions concerning children, whether undertaken.

1. By public or private social welfare institutions, courts of the 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;"

17. 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 applicants.
18. Accordingly, I allow the prayers sought in the originating summons dated December 13, 2022 and order as follows:
- i. The applicants INK and RGG be allowed to adopt Baby EK alias DC.
 - ii. The child to be known as JKWN
 - iii. The child be presumed to be a Kenyan citizen by birth.
 - iv. The date and place of birth of the child be presumed to be on October 12, 2019 at Kiptagich in Molo
 - v. RKH is hereby appointed as legal guardian of 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 discharged.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 30th DAY OF June, 2023.

P M NYAUNDI

HIGH COURT JUDGE

In the presence of:

Court Administrator Karani

