



**In re CK (Minor) (Adoption Cause E037 of 2022)
[2023] KEHC 23249 (KLR) (Family) (29 September 2023) (Judgment)**

Neutral citation: [2023] KEHC 23249 (KLR)

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

FAMILY

ADOPTION CAUSE E037 OF 2022

PM NYAUNDI, J

SEPTEMBER 29, 2023

**IN THE MATTER OF THE CHILDREN’S ACT NO 29 OF
2022**

IN THE MATTER OF ADOPTION OF BABY CK (MINOR)

AND IN THE MATTER OF AN APPLICATION FOR

KINSHIP ADOPTION BY

IN THE MATTER OF

WKB 1ST APPLICANT

CCN 2ND APPLICANT

JUDGMENT

1. This is a kinship adoption as the applicants are the paternal uncle and aunt to CK the minor, whom they seek to adopt *vide* Originating Summons dated March 16, 2023. They are therefore extended family of the child. The applicants have been married since 2007 as per marriage certificate serial number 5xxxx5. They wish to adopt the baby with the intention to provide for the child following the death of his single mother. The applicants have no biological children.
2. The matter proceeded for hearing via *viva voce* evidence on the Teams virtual platform on the July 27, 2023.
3. The Applicants are Kenyan Citizen residing in Toronto, Canada. They aver that they have the financial means and capability to take care of the Child. The 1st applicant as Computer Analyst and The 2nd applicant works as nurse. They fully understand the consequences of an adoption order.



4. The minor was born on April 25, 2006 as per the birth certificate annexed serial number 7xxxx8 to EJK. The minor's mother is now deceased, she died on September 9, 2011.
5. The child lives with his maternal grandparents in Eldama Ravine and attends school at Marigat Secondary School where he is in form 4. He has consented to be adopted by his uncle and Aunt.
7. Prior to the hearing of the adoption application, Buckner Kenya Adoption Society issued a certificate serial No 0610 declaring the child free for adoption. The Court appointed a Guardian Ad litem BKC.
8. The Guardian Ad Litem, BKC was present in Court. He confirmed that he assessed the Applicants. He recommends that the Applicants be allowed to adopt the minor.
9. An officer of the Department of Children Services, Ezekiel Kimani prepared a report dated April 25, 2023. Which was counter signed by Mary Atati. The report established that the child was born on April 25, 2006 as per the birth certificate annexed serial number 7xxxx8 to EJK. He is the nephew to the applicants. The minor's mother is now deceased, she died on September 9, 2011 but the name of his father does not appear in the birth certificate.
10. The child lives with his maternal grandparents in Eldama Ravine and attends school at Marigat Secondary School where he is in form 4. He has consented to be adopted by his uncle and Aunt who have been providing for him.
11. The proposed Legal Guardian CJB attended court and confirmed she is willing to take up the role of legal guardian. She is the sister to 1st applicant.
11. This is a kinship adoption under Section 193 of the *Children Act*, 2022 and Annex Cat Page 153 of the guidelines for Alternative family care of Children in Kenya, 2014 which defines Kinship adoption as adoption of a child by a person who is a relative of the child.
12. 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

- (1) 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.
13. The Applicants are aged 53 years and 51 years respectively.



14. 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

15. 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 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;

15. 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. Accordingly, I allow the prayers sought in the Originating Summons dated March 16, 2023 and order as follows:

- I. The Applicants WKB and CCN be allowed to adopt Baby CK
- II. The Child is to be known as CKB.
- III. The Child be presumed to be a Kenyan citizen by birth.
- IV. CJB is hereby appointed as legal guardian of the Child
- V. The Registrar is hereby directed to enter this adoption into the Register of Adopted Children.
- VI. The Director of Immigration is authorized to issue the child with a Kenyan passport.
- VII. The Guardian Ad litem is discharged.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 29th DAY OF September, 2023.

P M NYAUNDI

HIGH COURT JUDGE

In the presence of:

Sylvia Court Assistant

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