



REPUBLIC OF KENYA



**KENYA LAW**  
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**DKM & CKM (Applicants) (Adoption Cause E003 of 2023)  
[2023] KEHC 25780 (KLR) (24 November 2023) (Judgment)**

Neutral citation: [2023] KEHC 25780 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
ADOPTION CAUSE E003 OF 2023  
EM MURIITHI, J  
NOVEMBER 24, 2023**

**JUDGMENT**

**The Application**

1. Before the court is application by Originating Summons dated 29/12/2022 seeking specific reliefs for the adoption of the child subject of these proceeding as follows:
  1. That the consent of the biological parents of Baby EN be dispensed with since the child was abandoned shortly after birth.
  2. That the Applicants herein be and are hereby authorized to adopt Baby EQ and the child shall be called EN.
  3. That the court be pleased to appoint ZK & VG as the legal Guardians of Emyquinn Neema upon granting of the adoption Order.
  4. That the court be pleased to issue an order to the Director of Children Services Meru County to conduct investigations as to the suitability of the Applicants to adopt Baby EN and submit a report of their findings to the court.
  5. That the Registrar General be ordered to make the appropriate entries in the Adopted Children's Register in respect of EN.
  6. That EN be considered a Kenya Citizen.
  7. That the court be pleased to make any further Orders it deem necessary."
2. The Court granted an interlocutory application by Chamber Summons dated 29/12/2022 for the appointment of a Guardian Ad Litem and a direction that "the Director of Child Services Meru County conduct investigations as to the suitability of the applicants to adopt the child and submit a report of their findings to the court." The prayer for a similar order against the Chief Executive Officer Kenya Children's Home was redundant as this adoption has been initiated by the very said Adoption Society.



## The Law

3. Part XIV of the [Children Act](#) 2022 (Act no. 29 of 2022), Sections 183 – 216 of the [Children Act](#) 2022 sets out the law on adoption of children in Kenya.

## The Child

4. According to the pleadings and affidavits before the court, the female child whose given name is EQ (D.o.B 27/10/2018) was found abandoned on 29/6/2019 at Githurai Kimbo area Ruiru at the age of approximately 9 months and by Ruiru SRMC P&C case No. 11/2019 committed to the legal custody according of Limuru Children’s Centre for 3 years. A Final letter by Githurai Kimbo Police station dated 12/11/2020 confirmed that upon investigations the whereabouts of the mother were unknown and no one had claimed the child since the date she was found abandoned.

## Declaration of availability for adoption

5. The Kenya Children’s Home Adoption Society Case Committee declared the child free for adoption on 17/3/2021.

## The applicants

6. The applicants are spouses (certificate of marriage of 10/12/2005) aged 51 and 46 who work as primary school teacher and farmer, respectively, both of Christian faith and worship at [Particulars Withheld] Full Gospel Church, and residing at [Particulars Withheld] area of Meru County. They have no children of their own but they are the adoptive parents of another child (SB) by Order of this Court in Adoption Cause No. 7 of 2019 From documents presented, the applicants are capable of caring and providing for the child from the 1<sup>st</sup> applicants salaried income and the 2<sup>nd</sup> applicants proceeds of farming.
7. The child was placed with the applicants under a care agreement with Limuru Children Centre dated 6/5/2021 and the applicants has consequently been with the child for over 2 ½ years.
8. The Court examined the applicant on oath and confirmed their understanding and acceptance of their role as adoptive parents in accordance with the law to bring up and care for the child for all purposes as if she was their own child, and afford her all rights of a child from her parents including name, care and protection and to inheritance of their estates.
9. The Court established that the applicants were aware and accepted the consequences of their adoption of the child, in terms of section 202(1) of the [Children Act](#), as follows:

“202 (1) Upon an adoption order being made, all rights, duties, obligations and liabilities of the biological parents in case of a first adoption or adoptive parents in case of subsequent adoption or guardians of the child in relation to the future custody, maintenance and education of the child, including all rights to appoint a guardian, to inherit property and to consent or give notice of dissent to marriage, shall be extinguished, and all such rights, duties, obligations and liabilities shall vest in and be exercisable by, and enforceable against, the adopter as if the child were a biological child of the adopter and, in respect of the matters aforesaid, the child shall stand in relation to the adopter as a child born of the adopter.”



## Statutory reports

### Children Officer's Report

10. The Children Officer, Imenti North Sub-County, Mr. Joseph Mburu filed his report dated 14/9/2023 on the proposed adoption and suitability of the applicants and the guardians as follows:

“Observations

D and C are capable of being the adoptive parents of E.

The applicants have financial ability to 'support the needs of the subject until she becomes independent.

The applicants have satisfied section 186 of the *Children Act*.

Recommendations to the Court

It is my formed opinion that this honorable Court allows DK and CK to be the adoptive parents of E. this will be in the best interest of the subject. They have proposed to call her EN. However this is subject to this honorable court's ruling.”

### Guardian Ad Litem

11. The Guardian ad Litem TGK by a report dated 6/11/2023 confirmed a bonding between the child and the applicants and the other child of the family, and applicants' good care of child as follows:

“Report

The minor has been with the applicants, since 2021 and has since been enrolled to school at [Particulars Withheld] ACADEMY, proceeding to Grade I in January 2024 having satisfactorily completed the ECDE course at the same school.

I have been able to see her every week and I do confirm that she is in good health and well provided for on all amenities. She has a brother, Seth Baraka, who is extremely fond of her and her father is a teacher while the mother is a farmer who is mostly in her constant presence except when she attends school.

She is taken care of in all respects, and she has bonded very well with the family including the extended family of the applicants and as an aunt. she even spends some days with me.

Emy, as she is mostly addressed is a Sunday school member of the [Particulars Withheld] Full Gospel Churches of Kenya, under pastor Andrew Kaimenyt and is being spiritually molded in a good Christian setting.

I do confirm that EN is receiving the best possible care and affection from the adoptive parents and they are suitable to be granted the orders sought.”

### Necessary consents

12. The consents of the parents are waived under section 187 (1) (a) and (2) (a) as it is a case abandonment, and the whereabouts of the parents is unknown.



## Legal Guardians

13. The Consent of the Legal Guardians, VG who is a brother relative of the applicants and that of his wife, ZKM has been given in both writing and in testimony before the court. The two are suitable for appointment as Guardians of the child subject of these proceedings for purposes of section 195(1) of the *Children Act*.

## Other consideration

14. The Court notes that this is a second child placement and the approval by the Kenya Children’s Home Adoption Society for that purpose was granted by certificate dated 17/3/2021. The earlier adoption was granted in proceedings Meru HC Adoption Cause No. 7 of 2019 by this court (Otieno, J.) on 19/3/2021.
15. As a consequence of Article 14 (4) of *the Constitution*, and in the same terms section 7 (4) of the *Children Act* 2022, the Court shall make necessary direction to give effect to the substantive law that “A child found in Kenya who is or appears to be less than eight years of age, and whose nationality and parents are not known, shall be presumed to be a citizen by birth.”

## Court’s observations

16. The Court saw the child in court, examined her and made the following minute of the observation:

“ Court:

The Court observes that the child aged 5 is well groomed, healthy looking and at ease with the applicants in the court. She is well dressed. The court examines the child in Kiswahili and English and confirms that she is intelligent and looking forward to attending class 1 next year.”

The Court considers, in terms of Article 53 (2) and section 8 of the *Children Act* 2022, that it is in the best interests of the child who was abandoned at early age to find a home with loving parents, sibling and extended family ready to accept her as their child with full and all rights accruing to a child in a family. The Court approves the adoption and shall make consequential orders, as necessary.

## Orders

17. Accordingly, for the reasons set out above, the Court makes the following orders:
  1. Pursuant to section 187 (1) (a) and (2) (a) of the *Children Act*, the consent of the biological parents of Baby EN be dispensed with since the child was abandoned shortly after birth.
  2. The Applicants herein be and are hereby authorized to adopt Baby EQ and the child shall be called EN.
  3. The court appoints ZK and VG as the Legal Guardians of EN the subject of these proceedings for purposes of section 195(1) of the *Children Act*.
  4. The Court directs the Registrar General to make the appropriate entries in the Adopted Children Register in respect of EN pursuant to section 201 (1) of the *Children Act*.
  5. The Court orders that the child EN shall be considered a Kenyan Citizen in terms of Article 14 (4) of *the Constitution* of Kenya.



18. In consequence of the grant of the adoption order, the Guardian Ad Litem TGK is discharged in terms of section 188 (4) of the *Children Act.*”

Order accordingly.

**DATED AND DELIVERED THIS 24<sup>TH</sup> DAY OF NOVEMBER, 2023.**

**EDWARD M. MURIITHI**

**JUDGE**

**APPEARANCES:**

Mr. Kinoti Kirera Advocate for the Applicants.

