



**In re K (Baby) (Adoption Cause E001 of 2021)
[2022] KEHC 10079 (KLR) (28 April 2022) (Judgment)**

Neutral citation: [2022] KEHC 10079 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
ADOPTION CAUSE E001 OF 2021
TM MATHEKA, J
APRIL 28, 2022
IN THE MATTER OF CHILDREN’S ACT NO.8 OF 2001
(IN THE MATTER OF THE ADOPTION OF BABY K)**

IN THE MATTER OF

PKK 1ST APPLICANT

MNK 2ND APPLICANT

JUDGMENT

1. This is a joint adoption application by a Kenya couple namely Mr. PKK and Mrs. MK They first made an application through Child Welfare Society in 2009, never got a response, and then through Change Trust Adoption Society on 4th September, 2016.
2. The couple got married in 1996 but have not been blessed with their own biological children.
3. On her part the baby herein was said to have been born on October 28, 2015. The mother is reported to have taken her to Ponya Medical Centre at Githurai Kimbo and abandoned her there. A report was made to Githurai Kimbo Police Station vide OB No.xx. On November 11, 2015 the child was discharged to Hope House of Babies. The baby was committed to be there through a committal order by Children’s Court, Nairobi, through the Westland’s Sub-County Children’s Officer report of 11th July, 2017. After the police confirmed that no one had gone to look for the child, she was declared free for adoption on September 13, 2017, and certificate issued accordingly.
4. Vide their report filed on February 28, 2022 Change Trust Case Committee sitting on October 19, 2016, found the couple suitable and approved them for adoption of a female child of their preferred age.
5. On 1st December, 2017, the couple was approved as foster parents for the child herein by Hope House Babies Home, Baby K was by then 2 years old.



6. Thereafter the applicants filed this originating summons seeking orders: -
 - (1) That the minor be presumed a Kenyan Citizen.
 - (2) That the court dispense with the consent of the biological parents to the minor.
 - (3) That GGN be appointed Guardian ad litem
 - (4) That the Department of Children's Services, Ministry of Labour, Social Security and Services Affairs, Nakuru County investigate the Applicants' fitness to adopt and file a report.
 - (5) That the Applicants be authorized to adopt Baby K to be known as JWK.
 - (6) That SMM be appointed Legal Guardian of the Minor.
7. That the Registrar General be directed to make in the Adopted Children Register an entry recording the adoption in accordance with the particulars set out in the Schedule to order.
8. That the Registrar of Births and Deaths be and is hereby directed to issue the child with a certificate of birth in the name of JWK.
7. The application is supported by the requisite documentation which includes the report from the Directorate of Children Services, approving their suitability, recommendation from family and church, and evidence of financial and sound standing.
8. The guardian ad litem was appointed and he filed his report recommending their suitability.
9. The couple also testified in court to their desire to adopt a child, to them having lived with the child to date, (2022). They appointed a legal guardian, SMM who expressed her readiness to take over parental responsibility for the child in the event that they were unable to do so.
10. The only issues for determination is whether the Applicants are suitable to adopt the minor and whether adoption is in the best interests of the child.

Analysis & Determination.

11. Article 53 (2) of the Children's Act emphasizes that the child's best interests are of paramount importance in every aspect concerning the child's welfare. This is further emphasized under Section 4 (2) and (3) Children's Act that:
 - (2) In all actions concerning children whether undertaken by public or private social welfare institutions, courts of law, administrative authorities of legislative bodies, the best interests of the child shall be a primary consideration.
 - (3) All judicial and administrative institutions, and all persons acting in the name of these institutions, where they are exercising any powers conferred by this Act shall treat the interests of the child as the first and paramount consideration to the extent that this is consistent with adopting a course of action calculated to—
 - (a) safeguard and promote the rights and welfare of the child;
 - (b) conserve and promote the welfare of the child;
 - (c) secure for the child such guidance and correction as is necessary for the welfare of the child and in the public interest.



12. Section 154 (1) of the Children’s Act mandates the court to make an adoption order if it is satisfied that it is for the best interest of the child and upon all legal requirements being complied with.
 - (1) Subject to this Act, the High Court may upon an application made to it in the prescribed form make an order (in this Act referred to as “adoption order”) authorising an applicant to adopt a child.
13. Having considered the evidence of the Applicants and the legal guardian and perused reports filed by Guardian Ad litem dated 16th December 2021 and the Director of Children Services , all the documentation filed in support thereof it is evident that the Applicants understand the entire adoption process plus its future implications for themselves as a family.
14. Further the Applicants have fulfilled all the legal requirements relating to the adoption of the minor. They are within the age bracket required by law for adoptive parents being adults having attained the age of twenty-five years and are at least 21 years older than the child but have not attained the age of sixty-five years as provided by Section 158(1) of the Children’s Act No. 8 of 2011
15. The Applicants are also emotionally capable, medically fit and financially able to take care of the the child herein. They have undertaken to assume all the parental rights and duties of the biological parents in respect of the child and in particular to raise her as one of their own.
16. In the circumstances the proposed adoption is in the best interest of the child.
17. Hence the application dated 16th December, 2020 be and is hereby allowed in the following terms -
 - a. That Baby K is presumed to be a Kenya citizen.
 - b. The consent of the biological parents of the child is hereby dispensed with.
 - c. The applicants PKK & MNK are authorized to adopt Baby K.
 - d. Baby K shall henceforth be known as JWK.
 - e. SMM is hereby appointed the legal guardian of the child.
 - f. The Registrar – General to make the requisite entry into the Adopted Children’s Register and to issue the requisite certificate in the name of JWK.
 - g. The guardian ad litem GGN and is hereby discharged.
18. Orders accordingly

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 28TH APRIL 2022.

MUMBUA T MATHEKA J

In the presence of:

CA Edna

Ms. Mugweru for the applicants

