



**In re TK (Minor) (Adoption Cause 8 of 2016)
[2022] KEHC 11351 (KLR) (28 April 2022) (Judgment)**

Neutral citation: [2022] KEHC 11351 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
ADOPTION CAUSE 8 OF 2016
JN ONYIEGO, J
APRIL 28, 2022
IN THE MATTER OF THE CHILDREN ACT 2001**

IN THE MATTER OF

EWM APPLICANT

JUDGMENT

1. EWM ,moved this honourable court *vide* an originating summons application dated May 30, 2016 seeking the following orders:
 - a. That the director, children’s department to investigate, compile and file the requisite report on the applicant’s fitness to adopt TK.
 - b. That the applicant be authorized to adopt TK, a minor to be otherwise known as GKM.
 - c. Costs of this application be in the cause.
2. The application is supported by the applicant’s averments contained in the statement in support of the application sworn on May 30, 2016.The applicant is a female adult and a Kenyan citizen born in 1961. She is a widow having lost her husband on June 10, 2010.They were however not blessed with a child in their marriage which made them seek medical interventions without success. Her motivation to adopt a child is ignited by the desire to have a large family.
3. The child herein was born on June 13, 2004 at Huruma Maternity Nursing Home to one HLK who gave him for adoption six weeks after birth *vide* an undated consent letter and disappeared never to be seen. The child was admitted to New Life Home Trust and committed to the legal custody of the said home *vide* the Nairobi children’s court Protection & Care Case No 219 of 2005 on September 7, 2005. Little Angels Network in its meeting held on August 7, 2015 declared the child free for adoption and a certificate S/No Number XXXX issued.



4. Upon instituting this proceedings, Joash Odhiambo Dache was appointed as a guardian *ad litem* on October 5, 2016. The court directed the guardian *ad litem* and the Director of Children Services to file their respective social enquiry reports within 14 days.
5. Accordingly, the Director Children's Service through the children's officer Likoni filed a report on January 23, 2018 recommending the adoption. Similarly, the guardian *ad litem* filed his report on October 26, 2016 also recommending the adoption. During the hearing, the applicant urged the court to allow the application. She acknowledged that she understood the consequences of adoption and that it was permanent.
6. Having considered the application herein, the issues that emerge for determination are;
 - a. Whether the subject child is suitable for adoption
 - b. Whether the applicant is suitable to adopt the subject child
 - c. Whether the adoption is in the best interests of the child.
7. On whether the child is suitable for adoption, the child is estimated to have been born on June 13, 2004 at Huruma Maternity Nursing Home to one HLK who gave him up for adoption after birth *vide* an undated consent letter and then disappeared never to be seen. The child was admitted to new life home trust and committed to the legal custody of the home *vide* Children's Court at Nairobi Protection & Care case No 219 of 2005 on September 7, 2005. In conformity with section 156 of the [children Act](#), the baby is above six weeks the recommended minimum age limit for any adoptive baby.
8. On nationality, the child herein was born at Huruma Maternity Nursing Home by a Kenyan mother hence a Kenyan citizen by birth. Under section 157 of the [Children Act](#), any child who is resident in Kenya whether born in Kenya or is eligible for adoption. Thus it's my view that the child is fit for adoption.
9. On whether the applicant is suitable to adopt the subject child, she is 61 years old which falls within the provision of not less than 25 years and not more than 65 years under section 158 of The [Children Act](#). The applicant has been described as a financially stable person with a total income of Kshs 75,000. She is loving, caring and a christian with no criminal record. Since placement with the applicant, the child has fully bonded with her.
10. The applicant understands the consequences of these adoption proceedings and that it is permanent. She understands the role of a parent and is willing to take care and treat the child just like her biological child. Indeed, the applicant is duty bound to appreciate that she will be expected to treat the baby with humour and meet his basic obligations. In arriving at the above finding, I am guided by the holding in the case of In [re JNA](#) [2018] eKLR where the court stated that,

“I have perused the entire record and find that the Applicants meet the social parameters that are considered relevant to their taking on parental responsibility and custody of the child in this matter, on a permanent basis as would be conferred by the adoption order sought.”
11. On whether the adoption is in the best interests of the child, Article 53(2) of the [Constitution](#) and section 4(2) and (3) of the [Children Act](#) underscores the best interests of a child principle as the primary consideration before making any decision concerning a baby.
12. The child herein was surrendered for adoption willingly by his mother HLK. He is a child like any other who is in need of care and protection. He is also in need of basic necessities such as food, shelter, education etc. The applicant has been in charge of all matters and affairs related to the child. She is



the only parent the child has ever known and even the school identifies her as his parent. He has fully integrated with the applicant.

13. Having held as above, I am inclined to conclude that it's in the best interests of the child that the adoption be allowed. Accordingly, the application is allowed with the following orders;
- a. The child is declared a Kenyan citizen by birth
 - b. The applicant is authorized to adopt TK a minor who shall henceforth be known as GKM.
 - c. JK and EW are hereby appointed legal guardians of the minor in the event of any eventuality befalling the applicant.
 - d. The Registrar General is directed to enter the adoption order and estimated birth date of the child as June 13, 2004 in the adopted Children's Register.
 - e. The guardian *ad litem* is discharged.

DATED, SIGNED AND DELIVERED IN MOMBASA THIS 28TH DAY OF APRIL, 2022.

J.N.ONYIEGO

JUDGE

