



**In Re MA(Minor) (Adoption Cause E09 of 2021)
[2022] KEHC 10484 (KLR) (20 June 2022) (Judgment)**

Neutral citation: [2022] KEHC 10484 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
ADOPTION CAUSE E09 OF 2021**

**MW MUIGAI, J
JUNE 20, 2022**

IN THE MATTER OF

WMM APPLICANT

JUDGMENT

1. The applicant, WMM (“the applicant”) sought by her application to be allowed by this court to adopt baby MA (hereafter “the child”). The applicant is a civil servant with the ministry of health. Her desire to be a parent motivated her towards adoption, she has not been blessed with her own biological child/ren and hence has opted for adoption.
2. Through the chamber summons application filed on May 31, 2021, the applicant sought among other, orders from this court that FMK be appointed as the child’s guardian *ad litem*; that the director of children’s services to prepare a home study report for the suitability and fitness of the applicant to adopt the child and submit the same in court. FMK was appointed guardian *ad litem* on July 29, 2021.
3. The applicant further sought an order that upon adoption the child be known as PM; that the Registrar General to make the appropriate entry of PM in the adopted children’s register and finally that GKK be appointed as the legal guardian to the child.
4. The child who is the subject of the present adoption proceedings was born on March 28, 2015 at Vihiga district hospital to TL and BA as evidenced by Birth Notification Number XXXX. The biological parents (TL and BA – ID No XXXXXX) visited the Child Welfare Society of Kenya (CWSK) on the January 27, 2015 and expressed their intention to voluntarily relinquish their parental rights over the child. That during the counselling session it emerged that TL and BA are first cousins from the same clan – called [particulars withheld]. That according to their culture /beliefs people from the same family cannot marry or have children together as such a child is regarded as taboo hence the option of offering the child up for adoption.
5. After birth the child was rescued on March 30, 2015 by Child Welfare Society of Kenya (CWSK) and placed at Springs of life children’s home for temporary care and protection. The minor was later



committed to the said institution of May 14, 2015 *vide* committal order juvenile court No XXX/2015 at the Children’s Court in Kakamega dated May 14, 2015. On the May 18, 2015 the child’s family signed consents as provided by the law under section 158 (4)(a) of the *Children Act*, 2001 which states that “an adoption application shall be accompanied by the consent of every person who is a parent or guardian of the child”.

6. The minor was thus freed for adoption by the Child Welfare Society of Kenya on May 19, 2015 and a certificate freeing the child for adoption was issued *vide* certificate serial No XXXX pursuant to section 156(1) of the *Children’s Act* 2001.
7. Pursuant to section 156(1) of the *Children Act*, Child Welfare Society of Kenya, the relevant adoption society, prepared and filed in court a favorable report in respect of the proposed adoption of the child by the applicant. Another report in respect of the proposed adoption of the child by the applicant was prepared by the Director of children’s services, and this report was similarly in favor of the proposed adoption. The guardian *ad litem*, FMK, also filed the statutory report pursuant to section 160(2) of the *Children Act* in which she noted that the proposed adoption of the child by the applicant would be in the best interests of the child.
8. The Child Welfare Society of Kenya filed their report in court dated March 23, 2021. On July 29, 2021 Mr Francis Ndeleko – social worker from the agency appeared in court and confirmed that the child subject of these proceedings was placed with the applicant on August 10, 2015; that a home visit was made on 6/11/2019 and it was observed that the child has bonded well and refers to the applicant as her mother. The minor is already enrolled in school. According to their report the child was declared free for adoption *vide* the declaration certificate serial number XXXX issued on May 19, 2015. This was after the biological parents signed consents dated May 18, 2015 voluntarily offering the minor subject of these proceedings for adoption. On the background information of the applicant it was found that she is a clinical officer based at Athi River sub-county hospital; that she was married to one HMK in the year 1999 but her husband passed on in the year 2008 and they had not been blessed with a child/ren of their own. She lives in a 2 bedroom house and has organized the house to be child friendly. The applicant has enrolled the minor in a good school; she is planning to include the minor in her medical cover once adoption orders are granted. The applicant extended family members have supported this adoption and have embraced the child into their family. The child and the applicant have bonded well. The agency recommended the adoption.
9. The guardian *ad Litem*, FMK a civil servant with the ministry of health appeared in court on July 29, 2021 and stated that she has been friends with the applicant since 2010. That she visited the applicant’s residence and found that the child is quite healthy, well-kept and is a very happy in the environment, she has been enrolled in school; that the child has bonded well with the applicant as well as the entire family. The guardian *ad litem* fully recommended the adoption.
10. The Director of children services through a report dated July 10, 2021 in respect of the proposed adoption of the child by the applicant was prepared by Ms Mercy Muli the Sub-County children’s officer Athi River in relation to the background information of the applicant. On May 12, 2022, Ms Mercy Muli appeared in court and stated that she visited the applicant’s residence and observed the following; that the applicant is legally married and her husband passed on and they did not have any children, It was established that the applicant was married to the late HMK in the year 1999 *vide* marriage certificate no XXXX; that the husband passed on in the year 2008 *vide* death certificate no 230289; that the applicant works as clinical officer. During the home visit it was observed that the minor is well taken care of, happy and comfortable. The minor has been enrolled in a good school (Stepping Stone Academy) and is currently in PP2. The applicant is socially and economically capable; both the applicant and the minor have bonded well; that the adoption is for the betterment of the



minor. The Director of children service recommended the adoption as the applicant have fulfilled all the legal requirements for local adoption, she has proved to be capable of taking on parental responsibilities over the child in this matter, she has been found fit, the child in this matter has been declared free for adoption by a registered adoption agency.

11. The legal guardian GKK (brother to the applicant) filed his affidavit dated May 31, 2021 stating that he would take care of the child in case of any eventuality.
12. All the statutory reports that have been filed in respect of the proposed adoption of the child by the applicant have recommended that this court allows the adoption of the child. This court has evaluated the facts of this adoption. This is a local adoption. It is evident that the applicant has fulfilled all the legal requirements relative to the adoption of the child.
13. Considering that there are consents from the biological parents offering the minor for adoption, this court has satisfied itself that the applicant is qualified and able to take care of the child. The applicant's extended family members support this adoption and they have embraced the child into their family.
14. The home visits by the guardian *ad litem*, the adoption society and the Director of the children's services established that the applicant is financially and socially stable and has the emotional capability to provide for the upkeep and education of the child and give parental care. This court observed the applicant with the child in court and it was evident that in the period that the applicant has had the custody of the child, the child has bonded well with the applicant. The child considers the applicant to be her parent.

Disposition

1. On the basis of careful examination of the documents presented before me as well as the observations made therein, this court has formed the opinion that it would be in the best interest of the child to be adopted by the applicant. Hence, this court allows the applicant's application.
2. The applicant, WMM is hereby allowed to adopt baby MA. Henceforth, the child shall be known as PM.
3. The child's date of birth is March 28, 2015 and the place of birth shall be Kakamega county. The child is a Kenya citizen by birth and entitled to all rights of a Kenyan citizen.
4. That GKK shall be the legal guardian of the child should such eventuality arise.
5. This court directs the Registrar General to duly enter this order in the adoption register.
6. The guardian *ad litem* is hereby discharged.

It is so ordered.

**DELIVERED, DATED & SIGNED AT MACHAKOS THIS 20th DAY OF
JUNE OF 2022 (VIRTUAL CONFERENCE)**

M.W. MUIGAI

JUDGE

