



REPUBLIC OF KENYA



KENYA LAW
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**In re of KA (Minor) (Adoption Cause E059 of 2022)
[2022] KEHC 13505 (KLR) (Family) (23 September 2022) (Judgment)**

Neutral citation: [2022] KEHC 13505 (KLR)

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

FAMILY

ADOPTION CAUSE E059 OF 2022

MA ODERO, J

SEPTEMBER 23, 2022

IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF

2001

AND

IN THE MATTER OF AN APPLICATION FOR

ADOPTION BY GAM & BAM

IN THE MATTER OF ADOPTION OF BABY KA (MINOR)

IN THE MATTER OF

GAM 1ST APPLICANT

BAM 2ND APPLICANT

JUDGMENT

1. Before this court is the originating summons dated 6TH May 2022 in which the Applicant seeks the following orders:-

- “ 1. That the applicants be is hereby authorized to adopt the child KA, minor.
2. That upon adoption the child be known as KAM.
3. That the Registrar General be ordered to make appropriate entries in the Adopted Children's Register in respect of baby KAM.
4. That the court be pleased to appoint AJM and COA as the legal guardian of KA upon granting of the adoption orders.
5. That baby K be considered a Kenyan citizen.



6. That court be pleased to make any further orders it deem necessary.”
2. The application is supported by the statement of even date sworn by the applicants. The matter was canvassed by way of oral evidence on the virtual platform.
3. The applicants are a couple who got married to each other in January 1996. They have one biological child, a son who is now aged 37 years. The applicants now apply to adopt the subject child who is their grandchild being the biological child of their only son.
4. The applicants confirm to the court that they fully understand the legal implications of an adoption order. They undertake to accord to the subject child all rights due to a biological child including the right to inherit.

Analysis and Determination

5. The prerequisites for Adoption are set in section 156(1) of the [Children's Act 2001](#), which provides as follow: -

“156(1) No arrangement shall be commenced for the adoption of a child unless the child is at least (6) weeks old and has been declared free for adoption by a Registered Adoption Society in accordance with the Rules prescribed in that behalf.”

6. The subject child was born on July 11, 2011. A copy of his Birth Certificate Serial Number xxxx is annexed to the summons (Annexure GA- '1'). The child is now twelve (12) years old, way above age limit provided for in law.
7. Kenya children's Home Adoption Society which is a registered Adoption Agency have annexed to their Report their Certificate Serial Number xxxx dated April 28, 2022 declaring the child Free For Adoption. Accordingly, I am satisfied that all the legal prerequisites for adoption have been met.
8. The duty of this court is to analyze the evidence on record to determine whether the applicants are a suitable adoptive parents. The Applicants are both Kenyan citizens as evidenced by the copies of their National Identity Cards which have been annexed to the summons (Annexure GA MM '2(a)).
9. The couple got married in the year 1983 and later formalized their union through a civil union conducted at the Registrar's Office on January 9, 1996. They have annexed to the summons a copy of their Marriage Certificate Serial Number xxxx (Annexure G-3).
10. The applicants have a biological child a son named SAM who is now aged 37 years. The subject child is their grandson whom the couple have raised since the child was born. They now wish to adopt the child in order to legalize their relationship to the boy.
11. The applicants are both Christians and intend to raise the child in the Christian faith. They have annexed a copy of a recommendation letter dated March 13, 2022 written by Pastor Benjamin Mutuku Yanga of the St Andrews Chapel in Hindi-Lamu. The couple also have annexed copies of their medical reports which prove that they are both physically and mentally sound and are capable of raising a young child.
12. The applicants are both engaged in income generating activities. The 1st applicants is a retired civil servant who now runs his own business. The 2nd applicants is a nurse by profession and is employed by Lamu County as a Senior Nurse. She has annexed a copy of her payslip ('GA-9'). The 1st applicant



have also annexed copies of Bank Statements for an account held at Kenya Commercial Bank, Lamu. I am satisfied that the applicants are financially secure.

13. The applicants do not have a criminal record. They annexed copies of clearance Certificate issued to them by the Directorate of Criminal Investigations (Annexure GA 8(a) and 8(b)).
14. They confirm that their extended family are aware of and support their intention to adopt the subject child. They have appointed the 2nd Applicants sister COA and her husband AJM as the legal Guardians for the child. The said legal guardians have both signed consents dated 6th May 2022 confirming their willingness to act as legal guardians for the child. All in all I am satisfied that the Applicant is a suitable adoptive parent.
15. As stated earlier the subject child is the grandson of the applicants. The child who was born in July 2011 has lived with and been raised by the applicants since his birth as the biological parents of the child were unable and/or unwilling to take up the care of the child. The 2nd applicant was on March 4, 2020 appointed by the Lamu Senior Resident Magistrate as the Legal Guardian for the child. A copy of the Guardianship order is annexed to the summons.
16. Section 158(4) of the [Children Act, 2001](#) provides as follows:-

“(4) Subject to section 159 an adoption shall be accompanied by the following written consents to the making of an adoption order in respect of any child-

- a. the consent of every person who is a parent or guardian of the child, or who is liable by virtue of any order or agreement to contribute to the maintenance of the child.
- b.”

17. The biological parents of the child SAM (who is the son of the Applicants) and LWG both testified before court. They confirmed to the court that the Applicants have raised the child since he was born. The parents are not married to each other and the child was the result of a relationship the two had. The Childs mother told the court that she later left the home of the Applicants leaving her child behind. The Childs parents both confirm that they consent to the adoption of their son by his grandparents as neither is employed and they have no means to support the child. The biological parents have each signed a written consent dated 24th March 2022. The said consents are annexed to the summons (Annexures GA 13 and GA-14). Accordingly, I am satisfied that the requisite consents have been sought and obtained in line with section 158 of the [children Act](#)
18. In deciding upon any matter involving a child, courts are obliged to give priority to the best interests of the said child. Section 4(2) of the Children Act 2001 provides:-

“(2) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration”. (Own emphasis)

19. This is a Kinship adoption. The applicants are the paternal grandparents of the child. They have lived with the child and provided for all his needs from the time he was born. The child has a strong bond with the applicants and no doubt views them as his parents. The child will remain within the family and will have regular contact with his biological parents. The 2nd Applicant is already the court appointed legal Guardian of the child. This adoption merely formalizes the applicants relationship with the child.



20. Section 76(3)(a) of the *Children Act 2001* provides:-

“(3) Where the court is considering whether or not to make an order with regard to a child, it shall have particular regard to the following matters—

(a) The ascertainable feelings and wishes of the child concerned with reference to the child’s age and understanding.” (own emphasis)

21. I was able to see and interview the child online. He was a healthy twelve (12) year old boy who was articulate and was able to speak for himself. He told the court that he was aware of this application for adoption. The child confirmed that he has lived with the applicants since he was born.

22. The child was obviously very comfortable with the Applicants. He told the court that he was happy to be adopted by the Applicants. In this way, the child himself consented to the adoption.

23. I have perused the reports prepared by the Adoption Agency, the Guardian Ad Litem, and the Director Childrens Services. All three reports are positive and all recommend the adoption. The Applicants have two homes in Nairobi and in Lamu County. They have enrolled the child at [Particulars Withheld] School in Nairobi. A Home visit was conducted by the Children Officer in Nairobi. The Applicants were found to be residing in a four bedroomed house in South B Estate. The home was found to be a conducive environment for the child.

24. Based on the information availed to this court, I am satisfied that this adoption serves the best interests of the child, I therefore allow this application and make the following orders:-

1. The applicants GAM and BAM are authorized to adopt the child known as KA.
2. Upon adoption order the child be known as KAM
3. The Registrar General is directed to make the relevant entry in the Adopted Children’s Register.
4. AJM and COA are appointed legal Guardians for the child
5. The child is declared to be a Kenyan Citizen by birth and is entitled to all the rights and benefits in respect thereto”.

DATED IN NAIROBI THIS 23RD DAY OF SEPTEMBER, 2022.

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MAUREEN A. ODERO

JUDGE

