



REPUBLIC OF KENYA



**In re GC AKA GKM (A CHILD) (Adoption Cause 53 of 2018)
[2022] KEHC 13502 (KLR) (Family) (22 September 2022) (Judgment)**

Neutral citation: [2022] KEHC 13502 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE 53 OF 2018
MA ODERO, J
SEPTEMBER 22, 2022
IN THE MATTER OF ADOPTION OF BABY GC A.K.A GKM (A CHILD)
AND
IN THE MATTER OF AN APPLICATION FOR ADOPTION BY TMM AND AYK**

JUDGMENT

1. Before court is the originating summons dated April 23, 2018 by which the applicants seek the following orders:-
 - “ 1. Spent
 2. That JMM of PO Box xxxxx Katangi, Kenya be hereby appointed to act as the guardian of the child herein.
 3. That the applicants TMM and AYK of PO Box xxxxx Katangi, Kenya be hereby authorized to adopt the infant herein one BABY GC alias GKM.”
2. The application was supported by the joint statement of both 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 the year 2011 under Kamba Customary law. They later solemnized their union in the year 2017. Despite having been in a marital union since 2011 the couple have no biological child of their own. They now seek to adopt the subject child in order to complete their family.
4. The applicants both confirmed to the court that they understand the legal implications of an adoption order. They undertake to accord to the subject child all the rights and privileges due to a biological child including the right to inherit. They state that their families support their intention to adopt and have already welcomed the child as one of their own.



Analysis and Determination

5. I have carefully considered this application for adoption, the various affidavits and reports on record as well as the relevant law. I have also considered the evidence adduced in open court. The preliminary requirements for the making of an adoption order are set out in Section 156(1) of the *Children 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 is believed to have been born on January 1, 2012. He is now ten (10) years old way above the age limit provided for in law.
7. Buckner Kenya Adoption Services a registered Adoption Agency have annexed to their report the original copy of their certificate Serial Number xxxxx dated July 13, 2015 declaring the subject child free for adoption. I therefore find that the legal prerequisites for adoption had been met.
8. The duty of this court is to analyze the evidence placed before it to determine whether the applicants are suitable adoptive parents.
9. The applicants are both citizens of Kenya. They have annexed to the summons copies of their National Identity Cards. As stated earlier the applicants are a couple who initially got married to each other under Kamba Customary Law. The couple later solemnized their union on February 7, 2017 at the Registrar’s office. They have annexed to the summons a copy of their marriage certificate serial Number xxxxxx. The couple have no biological child of their own hence their desire to adopt a child.
10. The applicants reside in the ancestral family home in [Particulars Withheld], Machakos County. The 1st applicant is a business man and runs a butchery and a retail shop in [Particulars Withheld], whilst the 2nd applicant engages in farming activities. They earn a net income of approximately Kshs 30,000 per month which in a rural setting is sufficient to enable them provide for the child’s needs.
11. The applicants are both christians and intend to raise the child in the christian faith. They have provided a recommendation from Reverend of [Particulars Withheld] Church Katangi where the couple worship. Both applicants were examined by a doctor and were found to be physically and mentally fit.
12. The applicants have provided copies of clearance certificates issued to them by the Directorate of Criminal Investigations confirming that neither have a criminal record. The family of the applicants are aware of and support their intention to adopt the child. Indeed the couple have appointed JMM who is a brother to the 1st applicant as the legal guardian for the child. The said legal guardian has signed a consent dated April 23, 2018.
13. Based on the material presented to this court I am satisfied that the applicants are suitable adoptive parents.
14. The subject child is a boy child who is believed to have been born on January 1, 2012. The child was found abandoned on April 29, 2012 in an unfinished building at [Particulars Withheld] in the Soweto area A good samaritan rescued the child and reported the matter at Soweto Police Station *vide* OB Number xxxx of April 29, 2012.



15. Thereafter the Nairobi Children’s Court committed the child to the Imani Children’s Home for care and Protection. On August 30, 2015, the child was released into the custody of the applicants under a Foster Care Agreement.
16. Article 14 of the Constitution of Kenya, 2010 deals with the question of citizenship. Article 14(4) provides as follows:-
 - “(4) 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, is presumed to be a citizen by birth.
17. The Subject child was found abandoned at the age of four (4) months in the Soweto Area of Nairobi County within the Republic of Kenya. Accordingly, the child is presumed to be a citizen of Kenya and I do so declare.
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. The subject child was abandoned at the tender age of only four (4) months. Efforts by police to trace the child’s biological mother/relatives have proved futile. A final police letter dated January 19, 2013 confirms that no person has come forward to claim the child. Given the fact of his abandonment, I find that there exists no know person from whom consent for this adoption can be sought and/or obtained. Accordingly I waive the requirement for consent in line with section 159 (1) (a) of the Children Act 2001.
20. I have perused the report dated November 1, 2021 prepared by the Director Childrens Services. The report recommends the adoption. A Home visit was conducted on October 28, 2021. The applicants have constructed a two bed-roomed stone house within the ancestral family compound. The home was found to be spacious and is connected to light and piped water and was found to be a suitable environment to raise a young boy. The applicants live with their extended family. Therefore, the child has companionship from the relatives and the other children of the family.
21. I note that the child has been in the custody of the applicants from August 2015 a period of seven (7) years. Undoubtedly, he has bonded with the applicants and views them as his parents. I was able to interview the child online. He was a healthy cheerful boy and referred to the Applicants as his ‘mother’ and ‘father’.
22. This is a child who was abandoned as a baby. He faced an uncertain future living in childrens homes and other similar institutions. This adoption provides the child with the opportunity to be raised in a stable and loving home environment. This certainly serves the best interests of the child. Finally, I do allow this application and make the following orders:-
 1. The applicants TMM and AYK are authorized to adopt the child known as BABY GC.
 2. Upon adoption the child will be known as GKM



3. The child is declared to be a citizen of Kenya and entitled to all the rights and benefits in respect thereto.
4. The Registrar General is directed to make the relevant entry in the Adopted Children's Register.
5. JMM is appointed as the legal guardian for the child.

DATED IN NAIROBI THIS 22ND DAY OF SEPTEMBER 2022.

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MAUREEN A. ODERO

JUDGE

