



REPUBLIC OF KENYA



KENYA LAW
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**In re Baby JKW (Adoption Cause E109 of 2022)
[2022] KEHC 15850 (KLR) (Family) (18 November 2022) (Judgment)**

Neutral citation: [2022] KEHC 15850 (KLR)

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

FAMILY

ADOPTION CAUSE E109 OF 2022

MA ODERO, J

NOVEMBER 18, 2022

IN THE MATTER OF ADOPTION OF BABY JKW

EWK..... APPLICANT

JUDGMENT

1. Before this court is the originating summons dated July 8, 2022 by which the applicant EWK seeks the following orders;
 1. That the applicant be authorized to adopt JKW, a minor.
 2. That upon adoption the child be named as JNK.
 3. That the registrar general be ordered to make appropriate entries in the adopted children's register in respect of JNK.
 4. That the court be pleased to appoint JNK as the legal guardian of JNK upon granting of adoption order.
 5. That the child JNK be declared a Kenyan citizen.
 6. That the court be pleased to make any further orders it deems necessary.'
2. The summons was supported by the statement of the applicant and was canvassed by way of oral evidence on a virtual platform.
3. The applicant told the court that she is a single lady who resides in [particulars Withheld]. She stated that she has always wanted a child but due to medical issues, she has not been able to conceive hence the desire to adopt. The applicant confirmed that she understands the legal implications of an adoption order. She confirmed that she will accord the subject child all rights and obligations due to a biological child. She stated that her family is aware of and fully support her intention to adopt the child.



Analysis and determination

4. The legal prerequisite for adoption are set out in section 184 (1) (a) and (b) of the [Children's Act 2022](#) which provides as follows;
 - ' (1) A person shall not commence any arrangements for the adoption of a child unless—
 - (a) The council, in accordance with the rules, has declared the child free for adoption; and
 - (b) The child has attained the age of six weeks.'
5. The subject child was born at [particulars Withheld] on September 11, 2020, therefore, he is now aged two (2) years old and is above the six (6) weeks age limit provided for in the law. A copy of the child's birth certificate serial number XXXX is annexed to the summons (annexture 1).
6. The Kenya Children's Home Adoption Society which is a registered adoption agency has annexed to their report a certificate serial No XXX dated June 15, 2022 declaring the child free for adoption. In the circumstances, I am satisfied that the legal prerequisites for adoption order have been met.
7. The duty of this court is to analyze the evidence and material presented before it to determine whether the applicant is a suitable adoptive parent.
8. The applicant is a Kenyan citizen as evidenced by the copy of her national identity card annexed to the summons (annexture 2). The applicant stated she is a single lady and that she has always wanted to have a child but she has not been able to conceive due to medical complications.
9. The applicant stated she is a registered nurse working in the [particulars Withheld]. She has annexed copies of her payslip (annexture 13) indicating that she earns approximately Kshs XXX/- per month which is more than sufficient to provide for the needs of a growing child. The applicant has also annexed copies of her bank statements for an account held with Chase Bank.
10. The applicant also gets additional income of approximately Kshs XXX/- from rental properties. She owns the piece of land where she lives which she got from her mother as a gift. I am satisfied that the applicant is financially stable.
11. The applicant is a Christian and intends to raise the child in Christian faith. She is an active member of [particulars Withheld]. She has annexed to the summons a copy of a letter on recommendation dated March 25, 2022 written by Bishop RM of the said church.
12. The applicant has informed her family members who have been supportive about this adoption application and have embraced the minor as a member of their family. She has chosen her elder sister JNK to be the legal guardian for the child. The said legal guardian has signed a consent dated July 8, 2022 indicating her willingness to be so appointed (annexture '13').
13. The applicant has annexed a copy of her police clearance certificate confirming that she does not have a criminal record (annexture '11'). She is mentally and physically fit.
14. Based on the evidence presented to this court, I find that the applicant is a suitable adoptive parent.
15. The subject child is a boy child one of a set of twins born to SWN at the XXXX Hospital in Nairobi on September 11, 2020 (annexed is a copy of the child's birth certificate serial number xxxx).



16. SWN is a mother of five (5) other children. She testified in court and told the court that she conceived twins (one of whom is the subject child) after being raped by her elder brother, JK with whom she was living with at the time in [particulars Withheld]. That she threatened to report the incident to the police, and the said J took off the following day and has never seen him since then.
17. After conception S was psychologically traumatized and ashamed since the pregnancy was as a result of rape from her own brother. She tried to abort twice without success hence she opted to carry the pregnancy to term through the encouragement of a friend one AWK. (annexture 3) a copy of the affidavit sworn by the biological mother detailing facts surrounding the conception incidence and brother's whereabouts).
18. S would not keep or take care of the minor herein after giving birth to him because the minor was a product of incest which is not allowed in accordance to Kikuyu customary laws. She therefore decided to give up her twin children out for adoption. The subject minor was later handed over to the applicant who has since assumed full parental responsibility over the minor immediately after the childs birth to date.
19. Section 186 (8) (a) of the [Children Act 2022](#) provides as follows:-
 - ' (8) Subject to the provisions of this section, an application for an adoption order in respect of a child shall be accompanied by written consents of the following persons— (a) a parent or guardian of the child, or any person who is liable by virtue of any order or agreement to contribute to the maintenance of the child.,
20. The child's biological mother confirmed that she has voluntarily given up her child for adoption and has consented to the same. She confirmed that she was counselled by the adoption agency. The mother has sworn before commissioner of oaths an affidavit of consent to the adoption dated March 31, 2022 (exhibit 3). The mother also wrote a letter dated March 24, 2022 (annextrue '4') giving her consent for the adoption of her child. She confirmed to the court that she fully understands that an adoption order once made is irreversible.
21. Based on the evidence of the mother and her sworn affidavit, I am satisfied that the necessary consent has been sought and obtained.
22. The child having been born in Kenya to a Kenyan mother is a citizen of Kenya by birth. The whereabouts of the child's biological father remains unknown. He has played no role in the childs life since her birth and in the circumstances, I waive the requirement for his consent in line with section 187 (1) (a) of the Childrens Act 2022.
23. In deciding upon any matter involving a child, courts are obliged to give priority to the best interests of the said child. Section 8 (1) of the [Children Act 2022](#) provides:-
 - , (8). (1) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies—
 - (a) the best interests of the child shall be the primary consideration;'
24. This is a child whose biological mother was unable and/or unwilling to keep the child. The mother voluntarily handed the baby out for adoption to the applicant who is able to accord the child the opportunity to be raised in a loving and stable family unit. The child is currently living with the applicant's mother in Nairobi. I was able to see the child online, he was a healthy toddler playing in the advocate's office.



25. A home visit was conducted by the children's officer at the applicant's home. The applicant resides in a permanent owned house at [particulars Withheld]. It is a four bedroomed house with a sitting room, dining room, a store, kitchen, laundry room, three toilets and four bathrooms and a garage. The home has brick and electric fence with a metallic gate. The home environment was found to be secure and suitable for raising a young child.
26. I have perused the reports prepared by the adoption agency, the guardian ad litem and the director of children services. All three reports are positive and all recommend the adoption.
27. Finally, I find that this adoption does serves the best interests of the child. Accordingly, I allow this application and make the following orders:-
 1. The applicant EWK is authorized to adopt the child known as JKW.
 2. Upon adoption the child shall be known as JNK.
 3. The registrar general is directed to make relevant entry in the adopted children's registrar.
 4. JNK is appointed as the legal guardian of the child.

DATED IN NAIROBI THIS 18TH DAY OF NOVEMBER, 2022 .

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MAUREEN A ODERO

JUDGE

