



**In re ZTK (Baby) (Adoption Cause E003 of 2023)
[2024] KEHC 1043 (KLR) (8 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1043 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
ADOPTION CAUSE E003 OF 2023
RN NYAKUNDI, J
FEBRUARY 8, 2024
IN THE MATTER OF AN APPLICATION FOR ADOPTION OF BABY ZTK
AND
IN THE MATTER OF DJT AND AKK..... APPLICANTS**

RULING

1. The applicant approached this court vide a Notice of Motion Application dated 4th January 2024 seeking the following orders;
 1. Spent
 2. Spent
 3. That this Honourable Court be pleased to order that the requirement for a freeing certificate be and is hereby waived.
 4. That a declaration be and is hereby made that the waiver of the requirement for a certificate freeing the minor for adoption is appropriate and is in the best interest of the child.
 5. That a declaration be and is hereby made that this being a kinship adoption, the minor be freed for adoption.
2. The application is premised on the grounds set out therein and the affidavit sworn in support of the application by DTK. The applicant contends that the minor is in urgent need to fly to Australia to be with his parents and to be admitted to school. That the prayer declaring the minor free for adoption was inadvertently omitted and further, this being a kinship adoption, a freeing certificate is not necessary in the circumstances considering the consent given by the minor's grandfather vide an Affidavit sworn by DTK on 4th January 2024. The immigration department will not clear the said minor unless the certificate is produced or a waiver clearly made by this Honourable Court.
3. Learned counsel for the applicant filed submissions on 4th January 2024. He averred that this is a kinship adoption where the grandfather of the minor has given his consent. He cited the case of *In*



re JN (Minor) [2018] eKLR, where Justice A.K Ndung’u held that the adoption referenced was a kinship adoption and consent had been given by the biological father and based on report by the children officer, the application met the threshold and the same was allowed with the good judge giving emphasis that the same was in the best interest of the subject minor.

4. Counsel urged the court, having issued the adoption order, the requirement for freeing certificate will unnecessarily delay this minor who is slated to be admitted to school in Australia where his parents reside. Unless a waiver issues, his scheduled travel will be delayed in clear contravention of the best interest principal enshrined under article 53 of *the Constitution* of Kenya 2010.
5. He urged the court to allow the application as prayed.

Analysis & Determination

6. The only issue for determination is;
 - a. Whether the application is merited

Whether the application is merited

7. This court granted the order for the adoption of the minor herein vide a ruling dated 17th October 2023. The adoption was consented to by the grandfather to the minor being DTK and as such the court is satisfied that the same is a kinship adoption.
8. Article 53(2) of the *Constitution*, provides the over-arching principle which must apply whenever any decision concerning a child is to be undertaken. It provides that:

"A child’s best interests are of paramount importance in every matter concerning the child"
9. It is evident that the biological grandfather of the child had given consent to his adoption which is contained in the supporting affidavit. On the strength of the affidavit I am satisfied that the waiver of the requirement for a certificate freeing the minor for adoption is appropriate and in the best interest of the minor.
10. In the premises, the application dated 18th December 2023 is allowed in its entirety. I hereby order that;
 - i. The requirement for a freeing certificate is hereby waived.
 - ii. This being a kinship adoption, the minor is declared free for adoption.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 8TH DAY OF FEBRUARY 2024

In the presence of;

Oduor Advocate

.....

R. NYAKUNDI

JUDGE

mpassociateadvs@gmail.com

