



REPUBLIC OF KENYA



KENYA LAW
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**In re BKM (Minor) (Adoption Cause E221 of 2023)
[2024] KEHC 4002 (KLR) (Family) (5 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 4002 (KLR)

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

FAMILY

ADOPTION CAUSE E221 OF 2023

PM NYAUNDI, J

APRIL 5, 2024

IN THE MATTER OF THE CHILDRENS ACT, 2022

AND

IN THE MATTER OF BKM (MINOR)

AND

IN THE MATTER OF AN APPLICATION FOR KINSHIP ADOPTION

BY

IGK (THE APPLICANT)

JUDGMENT

1. Before this Court is the Originating Summons, Supporting Affidavit, Statement in Support of Application all dated 23rd August, 2023 respectively by which the Applicant seeks that; -
 - i. The IGK (the Applicant) be authorized to adopt by BKM (minor herein).
 - ii. The Registrar General be directed to enter this adoption into the register of Adoptions
 - iii. JWK be appointed as Legal Guardian of BKM.
 - iv. The minor be considered as a Kenyan Citizen.
2. The matter was canvassed by way of viva voce evidence on the virtual platform on 14th March, 2024.
3. The Applicant is a Kenyan by birth but currently resides in United States of America where she lives and work for gain as a Nurse. The Applicant is married to JK-M. They celebrated their marriage on 10th February, 2011 as Certificate of Marriage dated February 10, 2011 issued by the Commonwealth of Massachusetts dated February 10, 2011.
4. In their union they are blessed with two biological children aged fourteen years and eleven years



5. The Applicant, is a sister to AMK who is the biological father to minor, hence a kinship adoption as provided for under Section 193 of the [Children Act](#) 2022. The minor's mother is EWK and both parents have consented to the adoption proceedings.
6. The Applicant wishes to adopt her nephew with the intention of providing for him an opportunity of a strong sense of identity, security, stability and belonging. The parents of the minor are separated. The Applicant confirmed that she understands the legal implications of the Adoption order.
7. The child, who is the subject of the present adoption proceedings was born on 3rd February, 2012. The minor was born to AMK and EWK. The minor's parents are alive. The minor lives with his mother after his mother fell out with her husband. The minor attends school at [Particulars Withheld] Primary where he is in Grade 6. The minor asserts that his Aunt has been part of his life, not only supported him financially but even emotionally. The minor was present in Court and confirmed that he has consented to the Adoption proceedings.
8. Both parents attended Court and confirmed they consent to the adoption.
9. Upon an assessment and approval by KKPI Adoption Society, consent from the biological siblings of the minor, the consent from the minor, the minor was declared free for adoption by the same Adoption Society Vide a Certificate of Freeing Serial Number 852 dated 29th March, 2023.
10. PNK, the Guardian ad litem, presented her report dated 30th January 2024 in which she recommends the Adoption.
11. Pursuant to Section 102 of the [Children Act](#) 2022, Assistant Director of Children's Services prepared and filed in Court a favorable report dated 11th March, 2024. She stated that this being a Kinship Adoption it will be in the best interest of the minor since the Applicant has met the legal requirements as provided by [Children Act](#) 2022. She further stated that the Applicant is financially secure to take good care of the child.
12. The Spouse to the Applicant was present in Court and confirmed that he consents to the adoption.
13. The Applicant has no criminal record as evidenced by copy of Police Clearance Certificate Serial Number PCC-30TXXXX. This Court has evaluated the facts of this adoption. This is a Kinship adoption. It is evident that the Applicant has fulfilled all the legal requirements relative to the adoption of the child.
14. The proposed Legal Guardian was also present in Court and confirmed that he has consent to act as legal guardian and he understands fully the implications of being appointed a legal guardian to the minor.
15. After carefully assessing the records herein, I am satisfied that the Applicant has fulfilled all the legal requirements relating to the Child's adoption. Section 186 of the [Children Act](#), 2022 provides. The court may make an adoption order on application by-
 - (1) (a) Sole applicant; or
 - (b) Two spouses jointly.
 - (2) The court shall not make an adoption order in any case unless-
 - i. the applicant has attained the age of twenty-five years, but is not above the age of sixty-five years; and



- ii. The applicant, or both of the applicants in a joint application, is more than twenty-one years older than the child.
 - (3) The restrictions in subsection (2) shall not apply in any case where a sole applicant or one of the joint applicants is the mother, father, or relative of the child.
16. This Court is alive to the Jurisdiction of the High Court vide Article 165 Constitution of Kenya 2010 and Section 183(1) Children Act 2022. The Court is conscious of the law; Article 53 Constitution of Kenya 2010, Section 8 of Children Act 2022 and the UN Convention on the Rights of the Child & African Charter on the Rights & Welfare of the Child all amplify on the best interests of the child.

Determination

17. On the basis of a 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.
18. Consequently, I allow the prayers sought in the Application dated 23rd August, 2023 and order as follows:
- i. The Applicant, IGK be hereby allowed to adopt BKM (A Child).
 - ii. Henceforth, the child shall be known as BKM.
 - iii. His date of birth shall be 3rd February, 2012 and place of Birth is Gatundu
 - iv. He is presumed to be a citizen of Kenya by birth.
 - v. JWK shall be the Legal Guardian of the child
 - vi. The Registrar General to make the appropriate entry in the Adoption Register.
 - vii. The Director Immigration to issue the child with a Kenyan Passport.
 - viii. The Guardian *Ad litem* is discharged.

It is so ordered.

DELIVERED DATED & SIGNED IN OPEN COURT ON 5TH APRIL, 2024.

P. NYAUNDI

JUDGE

In presence of: -

Sylvia Court Assistant

