



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re JN (Child) (Adoption Cause E174 of 2023)  
[2024] KEHC 4001 (KLR) (Family) (5 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 4001 (KLR)

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

**FAMILY**

**ADOPTION CAUSE E174 OF 2023**

**PM NYAUNDI, J**

**APRIL 5, 2024**

**IN THE MATTER OF THE CHILDRENS ACT, 2022**

**AND**

**IN THE MATTER OF THE MINOR JN (CHILD)**

**BY**

**BWM (1ST APPLICANT) AND FRBR (2ND APPLICANT)**

**JUDGMENT**

1. Vide Originating Summons dated 5<sup>th</sup> September, 2023 the Applicants herein seek the following orders that:-
  - i. BWM and FRBR (1<sup>st</sup> Applicant and 2<sup>nd</sup> Applicant) be authorized to adopt JN (minor herein).
  - ii. The consent of the biological father of the child be dispensed with.
  - iii. EM be appointed as Legal Guardian of JN
  - iv. The Director of Children Services to investigate the Applicants' fitness and file a report.
  - v. The Registrar General be directed to enter this adoption into the register of Adoptions.
  - vi. The Court be pleased to make any further orders it deems necessary.
2. The 1<sup>st</sup> Applicant is a Kenyan Citizen by birth while the 2<sup>nd</sup> Applicant is a Dual-British/Australian Citizen and currently resides in Kenya. The 1<sup>st</sup> Applicant is a business lady at [particulars withheld] Limited while 2<sup>nd</sup> Applicant is a business man in the same Company. The Applicants are husband and wife. They formalized their marriage under Kikuyu Customary law as per joint affidavit sworn on 16<sup>th</sup> January 2023.



3. The 1<sup>st</sup> Applicant has two daughters J and A from a previous relationship. While the 2<sup>nd</sup> Applicant was married to AK that saw the birth of two children who are ORGR and CJR respectively. It's the 2<sup>nd</sup> Applicant's statement that he has since divorced AK and issued with decree absolute on 25<sup>th</sup> November, 2021.
4. It's the Applicants' further averment that after meeting F, B made him aware of her two lovely girls and the 2<sup>nd</sup> Applicant assumed the parental responsibilities of children and to date the 2<sup>nd</sup> Applicant has not hesitated to provide for the minors and the 1<sup>st</sup> Applicant.
5. 1<sup>st</sup> Applicant stated that she is the biological mother of the minor and has another child who is 9 years old who has also consented to the Adoption proceedings hence kinship adoption provided under Section 193 of the Children Act 2022.
6. The 1<sup>st</sup> Applicant also stated that together with her husband (2<sup>nd</sup> Applicant) they are in process of adopting the 2<sup>nd</sup> child. She further stated that she has lived together with 2<sup>nd</sup> Applicant for 4 years. It's the 1<sup>st</sup> Applicant averment that whereabouts of the biological father of the child h are not known and he does not appear on the birth certificate thus seeking for his consent should be dispensed with.
7. In addition, the 2<sup>nd</sup> Applicant averred that he understands the legal implications of an adoption order. The two children from previous marriage have given their consent to the adoption proceedings. The 1<sup>st</sup> Applicant stated that he has means to provide for the minor herein.
8. The child who is the subject of the present adoption proceedings was born on 9<sup>th</sup> April, 2006. The minor was born to BWM (1<sup>st</sup> Applicant herein). She attended Court on the virtual platform confirmed that she is 17 years old, studies at Daystar University Nairobi Campus and she has consented to the Adoption proceedings.
9. Upon an assessment and approval by Kenya Children's Home Adoption Society, consent from the Step father (2<sup>nd</sup> Applicant), 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 911 dated 21<sup>st</sup> June, 2023.
10. On 18<sup>th</sup> January, 2024 this Court issued an order appointing EMM as the child's guardian *ad litem*, and further directing the guardian *ad litem* and the Director of Children's Services to investigate and file their respective reports within 45 days.
11. Pursuant to Section 102 of the Children Act 2022, before this matter came up for hearing, Assistant Director of Children's Services countersigned a report prepared and filed in Court by Harriet Kihara Principal Children's Officer on 28<sup>th</sup> February, 2024 in respect of the proposed adoption of the minor by Applicants. She stated that this being a Kinship Adoption it will be in the best interest of the minor since the Applicants have met the legal requirements as provided by Children Act 2022. She further stated that the Applicants have proved capable of taking on parental responsibility over the child in this matter who has been under the Applicants continuous care and control. Another Report was filed by Kenya Children's Homes Adoption Society in favour of the adoption.
12. In addition, a Statutory Report was also filed by the guardian *ad litem*, EMM in which he asserted that the Applicants are financially stability, a nurturing home environment and a genuine commitment to the child's well-being hence recommended the adoption of the minor.
13. Other Statutory Reports filed stated that the Applicants are financially and emotionally capable of providing the child with care, protection and education. They have no criminal record as evidenced by copies of Police Clearance Certificate Serial Number PCC-8JXXXXW2 and Serial Number WOP-



- P5XXXXXV7. This Court has evaluated the facts of this adoption. This is a Kinship adoption. It is evident that the Applicants has fulfilled all the legal requirements relative to the adoption of the child.
14. The consent of the biological father of the child was dispensed with. The home visits by the guardian *ad litem* and the Assistant Director of the Children's Services established that the Applicants have the financial and emotional capability to provide for the upkeep and education of the child.
  15. The proposed Legal Guardian, B K was present in Court and confirmed that she has consented to her appointed as Legal Guardian and that she fully understands the implications of being appointed a legal guardian.
  16. This Court observed the Applicants with the minor in Court and it was evident that in the period that the Applicants have had the custody of the child, the child has bonded well with the Applicants. The child stated that she understood the adoption proceedings and that it meant the Applicants will acquire full parental responsibilities over her and she consented to the Adoption Proceedings.
  17. After carefully assessing the records herein, I am satisfied that the Applicants have 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.
  18. 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**

19. 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 Applicants.
20. Consequently, I allow the prayers sought in the Application dated 23<sup>rd</sup> August, 2023 and order as follows:
  - I. The Applicants, BWM and FRBR be hereby allowed to Adopt JN (a Child).
  - II. Henceforth, the child shall be known as JN Rigg.
  - III. Her date of birth shall be 9<sup>th</sup> April, 2006 and place of Birth Gatundu



- IV. She is presumed to be a citizen of Kenya by birth.
- V. B K is appointed Legal Guardian of the child
- VI. The consent of the biological father of the child is dispensed with.
- VII. The Registrar General to enter this order in the Adoption Children Register.
- VIII. The Director Immigration be authorised to issue the child with a Kenyan Passport.
- IX. The Guardian *ad litem* is discharged.

It is so ordered.

**DELIVERED DATED & SIGNED IN OPEN COURT ON 5<sup>TH</sup> APRIL, 2024.**

**P. NYAUNDI**

**JUDGE**

In presence of: -

Sylvia Court Assistant

