



**In re QWM aka QMW aka QWMN (Child) (Adoption Cause E080 of 2023)  
[2024] KEHC 3336 (KLR) (Family) (5 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 3336 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
ADOPTION CAUSE E080 OF 2023  
PM NYAUNDI, J  
APRIL 5, 2024  
IN THE MATTER OF THE CHILDRENS ACT NO. 29 OF 2022  
AND  
IN THE MATTER OF QWM A.K.A QMW A.K.A QWMN (THE CHILD)**

**IN THE MATTER OF**

**ENK ..... 1<sup>ST</sup> APPLICANT**

**SMT ..... 2<sup>ND</sup> APPLICANT**

**JUDGMENT**

1. Vide Originating Summons, dated 30<sup>th</sup> March, 2023 respectively by which the Applicants herein seek the following orders, that:-
  - i. They be authorized to adopt QWM a.k.a QMW a.k.a QWMN (Minor Herein).
  - ii. The child to be known as QWMT
  - iii. JNM and SWK be appointed as Legal Guardian of QWM .
  - iv. The Registrar General be directed to enter this adoption into the register of Adoptions.
  - v. The Director of Immigration be authorized to issue the child with a Kenyan Passport.
2. The 1<sup>st</sup> Applicant is a Kenyan Citizen by birth while the 2<sup>nd</sup> Applicant is a South African Citizen and currently resides in Kenya. The 1<sup>st</sup> Applicant is a Business lady whilst the 2<sup>nd</sup> Applicant is a (Particulars withheld) Legal Officer. The Applicants are husband and wife. They undertook Customary Marriage in October, 2021 under Kikuyu Customary Law and later celebrated their Civil Marriage Vide



- Certificate Number (Particulars withheld) on 9<sup>th</sup> June, 2022 at the Registrar's Office in Nairobi under the [Marriage Act](#), 2014.
3. The 1<sup>st</sup> Applicant was married to JM (deceased) who died on the 21<sup>st</sup> July, 2021. Out of that marriage, the couple were blessed with two children; QWM who is the subject matter in this adoption proceedings and ESMF . The 1<sup>st</sup> Applicant and 2<sup>nd</sup> Applicant were blessed with one biological child known as WEFT born on 24<sup>th</sup> February, 2022 as per copy of birth certificate.
  4. It's the Applicants' further statement that their relationship and marriage had been blessed and the 2<sup>nd</sup> Applicant assumed parental responsibility over the child herein and his sibling.
  5. The 1<sup>st</sup> Applicant testified that she is the biological mother of the minor herein and has a son 2 years old with the 2<sup>nd</sup> Applicant and another child who is 20 years old who has also consented to the Adoption proceedings hence kinship adoption provided under Section 193 of the [Children Act](#) 2022.
  6. The 2<sup>nd</sup> Applicant averred that he understands the legal implications of an adoption order. The 1<sup>st</sup> Applicant together with the minor herein have given their consent to the adoption proceedings.
  7. The child, who is the subject of the present adoption proceedings was born on 19<sup>th</sup> September, 2006 to JNM (deceased) and ENK (1<sup>st</sup> Applicant herein). He was present in Court and averred that he is 17 years old, attends school in (particulars withheld) School, [particulars withheld] Campus [particulars withheld] Campus and understands that he is in Court therefore consented to the Adoption proceedings.
  8. Upon an assessment and approval by [particulars withheld] Network, consent from the Step father (2<sup>nd</sup> Applicant), biological mother 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 [particulars withheld] dated 1<sup>st</sup> March, 2023.
  9. On 28<sup>th</sup> September, 2023 this Court issued an order appointing EWM 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.
  10. Pursuant to Section 102 of the [Children Act](#) 2022, before this matter came up for hearing, Nancy Waswa County Co-coordinator – Nairobi countersigned a report prepared by Mary Atati Assistant Director of Children's Services on 9<sup>th</sup> November, 2023 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. The child has strongly bonded with the adoptive parents, his sibling and the entire family.
  11. Another Report was filed by the guardian ad litem, EWM in which she stated that the Applicants have created a strong bond with the child and it will be in the best interest of the minor therefore recommended the adoption of the minor.
  12. RWM sister to the biological father affirmed that the family from the father's side does not object to the adoption herein as the biological father is deceased as per her affidavit attached.
  13. Additional, 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 [particulars withheld]. 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 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 JNM attended Court and confirmed he and his wife, SWK have consented to act as Legal Guardian and they understands the implications of that appointment.
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.
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.
19. 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**

20. 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.
21. Consequently, I allow the prayers sought in the Application dated 23<sup>rd</sup> August, 2023 and order as follows:
  - I. The Applicants, ENK and SMT be hereby allowed to adopt QWM (a Child).
  - II. Henceforth, the child shall be known as QWMT.
  - III. His date of birth shall be 19<sup>th</sup> September, 2006 place of Birth, Mt. Sinai Hospital, Thika
  - IV. He is presumed to be a citizen of Kenya by birth.
  - V. JNM and SWK shall be the Legal Guardians of the child.



- VI. The Registrar General to enter this order in the Adoption Register.
- VII. The Director Immigration be authorised 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 5<sup>TH</sup> APRIL, 2024.**

**P. NYAUNDI**

**JUDGE**

In presence of: -

Sylvia Court Assistant

