



**In re Baby MEMA (The Child) (Adoption Cause E076 of 2023)  
[2024] KEHC 5526 (KLR) (Family) (3 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 5526 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
ADOPTION CAUSE E076 OF 2023  
PM NYAUNDI, J  
MAY 3, 2024  
IN THE MATTER OF THE CHILDRENS ACT NO. 29 OF 2022  
AND  
IN THE MATTER OF BABY MEMA (THE CHILD)**

**IN THE MATTER OF  
MMK ..... APPLICANT**

**JUDGMENT**

1. Vide Amended Originating Summons, dated 4th October, 2023 the Applicant herein seeks the following orders, that:-
  - i. She be authorized to adopt MEMA
  - ii. The child be presumed to have been born in Kenya.
  - iii. The Registrar General be directed to enter this adoption into the register of Adoptions.
  - iv. MMK be appointed as Legal Guardian of the child.
  - v. That the child be issued with a birth Certificate in the name of EMA
  - vi. The child date of birth be 8<sup>th</sup> February, 2010.
2. The Applicant is a Kenyan Citizen by birth and currently resides in United States of American in XXXX Highway, Baltimore City. The Applicant is a teacher by profession. She is married to WMK and they live together although the husband is currently in Kenya. Their marriage Certificate Number is 271XXX.



3. Through the online platform in Court, the Applicant testified that she seeks to adopt the child who is her grandchild. The minor herein is the child to her daughter SN and SA. The Applicant is married and her husband stays in Kenya where he has approved the adoption. She stated she was last in Kenya July/August, 2023. The Applicant further stated that when the child is on holiday he stays with his parents. The reasons the Applicant adopting the child is because she wants to avail the child the opportunities that are in the US, the Applicant averred that she has secured a school for the child.
4. She further reiterated that she supports the child for her needs and the child likes staying with the Applicant hence this is a kinship adoption as provided for under Section 193 of the *Children Act* 2022.
5. The Applicant averred that she has means to provide for the child and that she understands the legal implications of an adoption order which is not reversible.
6. SN and SA are the biological parents of the minor herein and they stated in online platform in Court that the Applicant is their mother. They understand that by consenting to the adoption they will be relinquishing their parental rights and that the order is irreversible.
7. MEMA (the child herein) is the subject of the present adoption proceedings was born on 8<sup>th</sup> February, 2010 at Aga Khan Hospital, Nairobi. The child was present in Court and averred that he is 13 years old, attends school in XXXX Junior School where he is in class 8. The minor asserted that the Applicant is his grandmother and further that he is aware and consented to Adoption proceedings.
8. This being a Kinship adoption, the Applicant made legally necessary applications to be allowed to adopt the child and meets the Kinship Adoption requirements. The minor's parents verbally consented to the adoption proceedings expressing their willingness for the process of this adoption to continue and to have the child adopted by the Applicant.
9. Upon an assessment and approval by Change Trust Adoption Society, the minor was declared free for adoption by the same Adoption Society Vide a Certificate of Freeing Serial Number 00539 under Section 156 (1) of the *Children Act* 2022. And the Adoption Regulations.
10. On 25<sup>th</sup> May, 2023 this Court issued an order appointing SN 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, Ruth Boke Gikaro Children's Officer prepared and filed a report which was countersigned by Mary Atati Assistant Director of Children's Services on 27<sup>th</sup> November, 2023 in respect of the proposed adoption of the minor by Applicant. She observed that the Applicant is slightly older than the age recommended for any persons applying to adopt a child as stipulated under *Children Act*, 2022 Section 186 (2) (a) and (b) of the *Act*, Parents written consent as well as written consent from Applicant's husband were missing however, being a local Kinship Adoption by she recommended the adoption based on the natural exceptional bond between the child and the grandmother and subsequently recommended for the best interests of the child. She also noted that the Applicant has appointed SN Kinyoli and SAO (Applicant daughter and Son in law) as the legal guardians of the child herein. She further stated that this being a Kinship Adoption it will be in the best interest of the minor since the Applicant have met the legal requirements as provided by *Children Act* 2022.
12. It was evidence from the Court that SAO (the Legal Guardian) Son in law to the Applicant has 4 children with SNK who consented to the Adoption order and stated that he understands the obligations of a legal guardian and he is prepared to assume parental responsibilities should circumstances require.



13. Additional, other Statutory Reports filed stated that the Applicant is financially and emotionally capable of providing the child with care, protection and education. She has no criminal record as evidenced by copy of Police Clearance Certificate PCC-2ETA6PVK dated 3<sup>rd</sup> February, 2022. 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 online home visits by the Children’s Officer established that the Applicant has the financial and emotional capability to provide for the upkeep and education of the child and subsequently the Applicant understands well the contents of Right of Inheritance as stipulated under Section 17 of the *Children Act* 2022.
15. This Court observed the Applicant with the minor in Court and it was evident that the child has bonded well with the Applicant.
16. This is a Kinship Adoption. It is evident that the Applicant has fulfilled all the legal requirements relative to the adoption of the child. The consent of the biological parents of the child was dispensed with. This Court has satisfied itself that the Applicant is qualified and able to take care of the child.
17. After carefully assessing the records herein, I am satisfied that the Applicant has 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.
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 Applicant.
20. Subsequently, I allow the prayers sought in the Application dated 23<sup>rd</sup> August, 2023 and order as follows:
  - I. The Applicant MMK be hereby allowed to adopt MEMA (A Child).
  - II. The Registrar of Birth and Death to issue a Birth Certificate in the name of EMA
  - III. His date of birth shall be 8<sup>th</sup> February, 2010 and Place of Birth Aga Khan, Nairobi
  - IV. He is presumed to be a citizen of Kenya by birth.
  - V. SNK and SAO shall be the Legal Guardians of the child.
  - VI. The Registrar General to enter this order in the Adoption Register.
  - VII. The Director Immigration is 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 3<sup>RD</sup> MAY, 2024.**

**P. NYAUNDI**

**JUDGE**

In presence of: -

Fardosa Court Assistant

