



REPUBLIC OF KENYA



KENYA LAW
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**In re AZ (Child) (Adoption Cause E003 of 2023)
[2024] KEHC 7224 (KLR) (20 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 7224 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MURANG'A

ADOPTION CAUSE E003 OF 2023

CW GITHUA, J

JUNE 20, 2024

IN THE MATTER OF THE CHILDREN ACT NO. 29 OF 2022

AND

IN THE MATTER OF CHILD A Z

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION BY SJNM [APPLICANT]

JUDGMENT

1. The applicant approached this court through an originating summons dated 5th of April 2023 in which she sought, *inter alia*, that she be allowed to adopt Baby AZ ; that the Registrar – General be directed to make appropriate entries in the Adopted Children’s Register and that AWK be appointed as the legal guardian of the minor.
2. The pleadings show that the applicant is a Kenyan citizen domiciled in Murang’a County. She is a single lady 40 years old and is a teacher by profession. She professes the Christian faith. In support of her application, the applicant avers that she desires to be a parent and because she has not been blessed with children of her own, she wants to give Baby AZ a home and an opportunity to have a family.
3. From the material presented before me, it is evident that Baby AZ was born on 29th October 2020 at Mwiwila Mission Hospital in Kakamega County. The child’s mother, then a minor aged 16 years together with her mother offered the child for adoption on grounds that the young mother was still in school and the family did not have resources to take care of the child. After undergoing counselling and understanding the consequences of adoption, they signed the necessary consents on 17th December 2021. Prior to this date, the child had been declared free for adoption by the KKPI Adoption Society.
4. The record further shows that the County Coordinator for Children Services and officers from KKPI Adoption Services made home visits and made social inquiries with a view to determining the applicant’s suitability to adopt the child. They filed separate reports on 28th November 2023 and 4th March respectively which were favourable and recommended adoption of the child by the applicant.



On 8th February 2024, this court on application by the applicant appointed MKI as the child's guardian ad litem.

5. During the hearing, the applicant testified and confirmed that she has had sole custody and control of the child since he was eight months old and he was currently three and half years old; that they had already developed a close bond and she looked forward to raising him as her own son.
6. Having duly considered the summons together with all the documents filed in its support, I find that the applicant has complied with all the requirements for local adoption as stipulated in Section 184 to Section 186 of the *Children Act*. From the evidence on record including the applicant's testimony, I am satisfied that the applicant has aptly demonstrated that she is a mature and responsible lady who is socially, emotionally and financially capable of providing a stable home and a conducive environment for the child's emotional support, growth and all round development.
7. Article 53 (2) of the *Constitution* expressly provides that when considering any decision involving a child, the child's best interest must be given priority. It provides as follows:

“A child's best interest are of paramount importance in every matter concerning a child.”

This constitutional principle has been entrenched in the *Convention on the Rights of the Child* at Article 3 (1) which provision is replicated in Section 8 (1) of the *Children Act* No. 29 of 2022 which provides that;

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies—

- (a) the best interests of the child shall be the primary consideration;
- (b) the best interests of the child shall include, but shall not be limited to the considerations set out in the First Schedule.”

8. Section 8 (2) proceeds to require that;

“All judicial and administrative institutions, and all persons acting in the name of such institutions, when exercising any powers conferred under this Act or any other written law, shall treat the interests of the child as the first and paramount consideration to the extent that this is consistent with adopting a course of action calculated to—

- (a) safeguard and promote the rights and welfare of the child;
- (b) conserve and promote the welfare of the child; and
- (c) secure for the child such guidance and correction as is necessary for the welfare of the child, and in the public interest.”

8. Applying the above principles to the current case, I have no doubt in my mind that it will be in the best interest of Baby AZ to be adopted by the applicant. The child has been living with the applicant for over two years and has already accepted her as his mother. As correctly noted in the KKPI Adoption Society's Report, allowing the proposed adoption will enable the child gain from the opportunities that would accrue from being raised in the applicant's home as opposed to growing up in an institution.
9. Given the foregoing, I am convinced that the Originating Summons dated 5th April 2023 is merited and I consequently allow it on the following terms;



- i. The applicant is allowed to adopt Baby AZ who shall henceforth be known as MJM .
- ii. The Registrar- General is directed to enter this adoption in the Adopted Children Register.
- iii. That AWK is appointed as the child’s legal guardian in the event of the death or incapacity of the applicant before the child attains the age of majority and is self-reliant.
- iv. The guardian ad litem is hereby discharged.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MURANG'A THIS 20TH DAY OF JUNE, 2024.

C.W. GITHUA

JUDGE

In the presence of :-

The Applicant

Ms. Susan Waiganjo Court Assistant

