



**In re RW (Minor) (Adoption Cause E057 of 2024)
[2024] KEHC 11123 (KLR) (Family) (19 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 11123 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E057 OF 2024
CJ KENDAGOR, J
SEPTEMBER 19, 2024
IN THE MATTER OF THE CHILDREN’S ACT NO. 8 OF
THE LAWS OF KENYA
AND
IN THE MATTER OF ADOPTION OF BABY RW
(MINOR)**

IN THE MATTER OF
JWM 1ST APPLICANT
FLW 2ND APPLICANT

JUDGMENT

1. Before Court is the Originating Summons dated 11th March, 2024 in which the Applicants seek the following orders;
 1. That the Applicants, JWM and FLW be authorized to adopt the child currently known as RW.
 2. That the child to be known as TWW.
 3. That the guardian ad litem be discharged and PKM (the 2nd Applicant, FLW’s brother) be appointed as the child’s Legal Guardian if the Applicants herein are incapacitated or unable to discharge their parental obligations.
 4. That the Registrar General be directed to make the appropriate entries in the Adopted Children Register and issue a certificate.
 5. That the court be pleased to make any further orders it deems necessary.



2. The Applicants, Kenyan citizens by birth residing in Nairobi County. They are husband and wife who got married on 25th June, 2016 at St. Marks, Westlands as evidenced by their marriage certificate produced before this court. The 1st Applicant is an advocate of the High Court whereas the 2nd Applicant is a banker by profession.
3. They averred that they have lived with the minor since 15th September, 2023 and that they have the financial capability to take care of the minor, who was declared free for adoption by Change Trust.
4. On the online platform in Court, JWM stated that they wish to adopt the minor who was placed in their custody on 15th September, 2023 and that he understands the implications of the Adoption Order.
5. FLW told the court she understood the implications of the Adoption Order and that they wish to adopt Baby RW.
6. PKM, the proposed Legal guardian, is FLW's brother. He told the court that he understands his role and is ready to undertake that responsibility. His wife, JWM, told the court that she and her husband would undertake the role of legal guardians.
7. M.N. from Change Trust presented a Report dated 10th June, 2022 and a Certificate declaring the child free for adoption dated 21st July, 2023. He told the court that they approved the adoption.
8. L.N.W, the guardian ad litem produced a report dated 5th June, 2024. She told the court that she visited the Applicants and interviewed them. She recommended the adoption, which is in the minor's best interest.
9. Ms Kihara, on behalf of the Director of Children Services, produced a Report dated 20th May, 2024. The Director recommends the adoption.

Analysis And Determination.

10. The Preliminary requirements for the making of an Adoption Order are set out in Section 156 (1) of the *Children's Act* which provides as follows: -

“ 156 (1) No arrangement shall be commenced for the adoption of a child unless the child is at least six (6) weeks old and has been declared free for adoption by a Registered Adoption Society in accordance with the Rules prescribed in that behalf.”
11. The subject child is believed to have been born on 24th December, 2021. She is now two years and nine months old, above the six (6) week age limit set by law. Change Trust, a Registered Adoption Agency has filed in Court a Certificate Declaring a Child Free for Adoption. I am satisfied that all the prerequisites for Adoption have been met.
12. This Court has a duty to analyze the evidence presented to determine whether the Applicants are suitable adoptive parents for the subject child. The Applicants are Kenyan citizens, as evidenced by the copy of their national identity cards annexed to the Summons. The Applicants are a couple and have no biological child of their own.
13. In their statements, the Applicants stated that they informed their families of their intention to adopt the minor and supported their decision. The Applicants also stated that they work and can cater for the minor.



14. The Applicants have annexed copies of Clearance Certificates issued to them by the Kenya Police Service on 30th January, 2024 indicating that they do not have a criminal record. They reside with the child in a 3-bedroomed house in (particulars withheld). The home was found to be conducive for raising the child.
15. I am satisfied that the Applicants have a genuine desire to adopt the child. They are suitable as adoptive parents.
16. The subject child is a female child believed to have been born on 24th December, 2021. The child is said to have been given up for adoption by the biological mother after birth. She approached the Change Trust Adoption Agency in Nyeri. She signed a consent on 28th December, 2021. Efforts to trace the biological mother to sign the final consent have been futile, and this was reported to Nyeri Police Station vide OB No.XXXX/2023. A letter from Nyeri Police Station dated 15th June, 2023 and from the Department of Children Services Nyeri confirms this. The child was placed under the care of the Applicants on 15th September, 2023.
17. In deciding upon any matter involving a child Courts are obliged to prioritize the child's best interests. Section 4 (2) of the *Children Act* provides: -
 - “(2) In all actions concerning children, whether undertaken by public or private social welfare institutions, Courts of Law administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration.” [own emphasis]
18. The subject child was given up for adoption at birth. This Adoption allows the child to be raised in a stable and loving family environment.
19. The subject child has lived with the Applicants since 15th September, 2023 – a period of one year. This is the only family she knows. I do not doubt that the child has bonded with the Applicants.
20. Based on the foregoing, I am satisfied that this adoption serves the child's best interests. As such, I do allow this application and make the following orders:
 - i. The Applicant, JWM and FLW are authorized to adopt the child known as Baby RW.
 - ii. The Registrar-General is directed to make the relevant entries in the Adopted Children's Register.
 - iii. Upon adoption, the child will be known as TWW.
 - iv. PKM is hereby appointed as the child's legal guardian.
 - v. The guardian ad litem is hereby discharged.
 - vi. No orders on costs.
21. It is so ordered.

DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT ONLINE PLATFORM ON 19TH SEPTEMBER, 2024.

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C. KENDAGOR



JUDGE

In the presence of:

Court Assistant: Beryl

Advocate: Ms. Nderu

