



**In re Adoption of VBW (Adoption Cause E025 of 2024)
[2024] KEHC 13901 (KLR) (Family) (17 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 13901 (KLR)

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

FAMILY

ADOPTION CAUSE E025 OF 2024

BK NJOROGE, J

OCTOBER 17, 2024

IN THE MATTER OF THE CHILDREN ACT 29 OF 2022)

AND

**IN THE MATTER OF AN APPLICATION FOR THE
ADOPTION OF VBW**

IN THE MATTER OF

DMM 1ST APPLICANT

LMM 2ND APPLICANT

JUDGMENT

1. This is an Adoption Application by DMM the 1st Applicant and LMM the 2nd Applicant. They jointly presented an Originating Summons dated 17th January, 2024. It is supported by the joint Statement of the Applicants dated the 17th January, 2024 as well as the Affidavit of the Joint Applicants sworn on 17th January, 2024. It seeks the following orders;
 - a. That the Applicants be authorised to adopt the child: VBW who is a Kenyan citizen, born on the 26th of October, 2010.
 - b. That upon adoption, the child shall be known as VBM.
 - c. That EMM AND JKG of Kenyan Identity Card Number 217XXX43 and 239XXX75 respectively be appointed as the legal guardian of the child; VBW.
 - d. That the Registrar-General be directed to enter this adoption into the Register of Adoptions and subsequent Birth Certificate do issue by the Registrar of Births and Deaths.



- e. That the Guardian Ad Litem be discharged.
2. At the preliminary hearing on 18th April, 2024 RNG was appointed as the Guardian Ad Litem and she subsequently filed the Guardian Ad Litem's Report dated 16th May, 2024.
 3. The Court also notes that the Director of Children Services has filed a Statutory Report dated 29th April, 2024.
 4. This matter came up for hearing virtually on 18th July, 2024 and 25th July, 2024. The 1st Applicant aged 47 years works as a Private Consultant offering consultancy services in business Development. The 2nd Applicant aged 47 is a business lady operating a general shop she also sells general household items and clothes. The Joint Applicants reside at Kinoo in Uthiru.
 5. The Joint Applicants testified that they are married. They got married on 16th December, 2006 at Parklands Baptist in Westlands, Nairobi. They have a marriage certificate serial number 56XX38. This is a Christian marriage hence monogamous.
 6. They expressed their desire to jointly adopt VBW, whom they wish to name VBM. The 1st Applicant is the uncle to the child. The birth mother of the child, one EGG is a biological sister to the 1st Applicant. She is deceased having passed away on 18th August, 2018. A certificate of Death serial Number 07XXX59 is attached to the application. The whereabouts of the child's birth father ZOK are said to be unknown. He was not introduced to the family by the late EGG and he did not play any part in the child's life. He did not participate in raising up the Child and they have never met. His name does appear on the Child's birth certificate serial number 70XX97 dated 22nd August, 2019. The Child was born on 26th October, 2010. Upon the demise of the child's mother, he was taken care of by the grandparents. Later the Joint Applicants took up this role due to the parents advancing years as well as the child's growing needs. The Child the subject matter of this proceedings is orphaned, hence lacking parental figures in his life. The Applicants as his uncle and auntie have stepped in and taken up the roles of parents. They wish to give the Child a better life within their family setting. They already have another biological child RM who was born on 2nd July, 2008. The 1st Applicant will step up to the role left vacant by the absentee father. The 2nd Applicant will assume the role of the mother left vacant by the incidence of death.
 7. The Joint Applicants understand the irrevocable nature and permanency of an adoption order. They are also aware of the rights of inheritance of the child. Specifically, the Joint Applicants are fully aware that they will acquire all parental rights over the child. In turn, the child has the rights of inheritance over their property.
 8. The Joint Applicants' son RMM is equally aware of the effects of an Adoption order. The Court has seen a hand written letter written by him to acknowledge and confirm he approves of the process.
 9. The Child the subject matter of this proceedings is the only child of EGG. She got this child out of wedlock and never married.
 10. Buckner Kenya Adoption Services issued a certificate declaring the child free for Adoption, Serial Number 0713 dated 29th September 2023. This is pursuant to Section 184 (1) (a) of the *Children Act* cap 141 of the Laws of Kenya.
 11. The Joint Applicants were assessed by Buckner Kenya Adoption Services an adoption Society and approved by its case committee for Adoption on 6th October, 2023. The child lives and has been living with the Joint Applicants since November, 2018.



12. The Report of the Guardian Ad Litem RNG dated 16th May, 2024 favours the adoption. She noted that the Child has adjusted well and is ready for this Kinship adoption. She appeared in Court virtually to present his Report.
13. The proposed Legal Guardians are EMM and JKG. They are a husband a wife. JKG is a sister to the 2nd Applicant. EMM is a brother-in-law to the Joint Applicants. They have both consented to being appointed as the Legal Guardians and that they understood the effects of such an order. They both appeared in Court virtually and confirmed they were still keen and willing to be appointed as Legal Guardians to the child.
14. James Jumba Peru a representative of Buckner Kenya Adoption Services also attended Court virtually to confirm that the adoption process met the requirements of the Law. The Society approves the adoption as being in the best interests of the child. He confirmed that a Certificate freeing up the Child for Adoption had been issued.
15. Finally, Harriet Kihara a Children Officer appeared in Court and adopted the Report dated 29th April, 2024 prepared by Ezekiel Kimani and countersigned by Mary Atati for the Assistant Director Children's Services. She recommended the adoption.
16. The Court observed the Joint Applicants as well as the Child during the hearing and noted that this is a kinship adoption. The Joint Applicants are the Uncle and Auntie of the child. Hence this is an adoption within the family setting. The child is 13 years old and understands the nature of the orders sought herein as well as the adoption and has consented to the same.
17. The Joint Applicants have demonstrated their financial capacity to take care of the child. They are in good health. They have no criminal records as witness their Police clearance Certificates Ref PCC-LLTR5ZEB dated 18th September, 2023 (for 1st Applicant) and PCC-B5TZDEBR dated 14th July, 2023 (for 2nd Applicant).
18. Section 186 of the [Children Act](#) cap 141 states as follows;

“ 186. Who may apply to adopt a child

1. The Court may make an adoption order on application by
 - (a) a sole applicant; or
 - (b) two spouses jointly.
2. The Court shall not make an adoption order in any case unless
 - a. the applicant has attained the age of twenty-five years, but is not above the age of sixty-five years; and
 - b. 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.
4. The Court shall not make an adoption order in favour of a sole male applicant, unless the applicant is a blood relative of the child.



5. The Court shall not make an adoption order in favour of the following persons unless the Court is satisfied on reasons to be stated on the record that there are special circumstances that warrant the making of the adoption order an applicant or joint applicants who has, or both have, attained the age of sixty-five years.”
19. The Court notes that in a Kinship adoption, the Child remains still very much part of the family. The adoption will provide the child with benefits that may not readily accrue from the birth mother, now dead or the grandparents who are advanced in age. He has an opportunity to live with the Joint Applicants at Uthiru within the vicinity of Nairobi. He may benefit from the access to education, the job opportunities etc. He now has right to inherit. Access to a stable home as well as pursue his dream. To this Court the adoption works in the best interests of the Child
20. The Court has taken note of the Statutory Reports filed regarding this Adoption, all which favour the adoption.
21. The Court has considered all the facts presented in the adoption proceedings as well as evaluated the Reports and testimonies of all those parties who attended the virtual hearing on 18th July, 2024 and 25th July, 2024.
22. The Court is alive to its jurisdiction under Article 165 and 53 of the *Constitution* of Kenya. Section 183 (1) of the *Children Act*. The Court has considered Section 8 of the *Children Act*, the United Nations Convention on the Rights of the Child and the African Charter on the Rights of the Welfare of the Child.
23. This is a Kinship Adoption pursuant to Section 193 (1) of the *Children Act*. The guiding principle remains in the best interests of the child pursuant to Section 8 and 194 (1) (c) of the *Children Act*.
24. The child is a Kenyan citizen by birth.
25. The orders sought are merited in the circumstances.
26. The Court is persuaded that the adoption will provide the Child with a safe, permanent home and loving environment and hence is in the best interests of the child.

Determination

27. The Court makes the following orders;
 - a. That the Applicants be authorised to adopt the child: VBW who is a Kenyan citizen, born on the 26th of October, 2010.
 - b. That upon adoption, the child shall be known as VBM.
 - c. That EMM AND JKG of Kenyan Identity Card Number 217XXX43 and 239XXX75 respectively be appointed as the legal guardians of the child; VBW.
 - d. That the Registrar-General be directed to enter this adoption into the Register of Adoptions and subsequent Birth Certificate do issue by the Registrar of Births and Deaths.
 - e. That the Guardian Ad Litem be discharged.
28. It is so ordered.



DATED, SIGNED AND DELIVERED AT NAIROBI THIS 17TH DAY OCTOBER, 2024.

NJOROGE BENJAMIN. K

JUDGE

In the presence of: -

..... for the Applicants

Court Assistant:

