



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Baby NM alias KK (Child) (Adoption Cause E008 of 2022)  
[2024] KEHC 12829 (KLR) (9 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 12829 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
ADOPTION CAUSE E008 OF 2022  
DKN MAGARE, J  
OCTOBER 9, 2024**

**IN THE MATTER OF THE CHILDREN'S ACT NO 29 OF 2022**

**AND**

**IN THE MATTER OF BABY NM ALIAS KK (CHILD)**

**AND**

**IN THE MATTER OF AN APPLICATION FOR ADOPTION ORDER BY NWW**

**JUDGMENT**

1. This judgment is in respect of the Amended Originating Summons dated 19/1/2024 seeking an adoption order.
2. The application seeks for orders that:-
  - a. The Applicant be authorized to adopt the child baby KK.
  - b. Consent of the biological parents be dispensed with as the child is abandoned.
  - c. Upon making the adoption order, the child be known as JKM.
  - d. The Registrar General do make the appropriate entry in the adopted children's register.
3. The application is premised on the schedule on its face and in the supporting affidavit of NWW, filed on 23/1/2024. The Applicant is a female adult. She was initially married to PW who passed on on 22/3/2023. The Applicant applied for adoption in Change Trust Adoption and the same was approved on 15/12/2017. The child in issue was received on 15/10/2020.
4. That the child was abandoned and adopted from Change Trust and has no known biological parents.

**Analysis**

5. The issue is whether the court should allow the adoption herein. Section 183 of the [Children's Act](#) provides as follows: -



- (1) Subject to this Act, the High Court may, on an application made in the prescribed form, make an order, in this Act referred to as "adoption order", authorizing an applicant to adopt a child.
  - (2) All proceedings under this Part shall be heard and determined in chambers, and the identity of the child and the applicants shall be kept confidential.
  - (3) In this Act, adoption means local, kinship and foreign adoption.
  - (4) For the purposes of this Part—
    - (a) "kinship adoption" has the meaning assigned to it in section 2;
    - (b) "local adoption" means an adoption in relation to which the child is resident in Kenya; and
      - (ii) the adopting parent or parents are Kenyan nationals resident in Kenya; and
    - (c) "foreign adoption" means an adoption in relation to which—(i) the adopting parent or parents are Kenyan nationals with dual citizenship;
      - (ii) the adopting parent or parents are foreign nationals whether or not resident in Kenya;
      - (iii) the adopting parent or parents are not Kenyan nationals but are biologically related to the child; or
      - (iv) the adopting parent or parents were once Kenyan nationals but have lost their nationality by operation of the law of the host country to which the prospective parent or parents have a nationality.
6. Pre-requisites for adoption are also stated under section 184 of the *Children's Act, 2022* as follows:
- (1) A person shall not commence any arrangements for the adoption of a child unless—
    - (a) the Council, in accordance with the rules, has declared the child free for adoption; and
    - (b) the child has attained the age of six weeks.
  - (2) A person, including a parent, guardian or adoption society, shall not, prior to the making of an adoption order, entrust a child to the care, possession or control of any person not qualified to adopt a child in accordance with this Act.
  - (3) An applicant shall not preselect a prospective adoptive child except—
    - (a) in the case of kinship adoption;
    - (b) Where the applicant is a foster parent seeking to adopt a fostered child under the applicant's care.
  - (4) The Secretary shall monitor and submit reports to the courts on the wellbeing of a child who is subject to adoption proceedings.
  - (5) Any person who contravenes subsections (1) or (2) of this section commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine not exceeding one million shillings, or to both.
7. Under Section 185, children who may be adopted are stated as follows:



- (1) Any child who is resident within Kenya may be adopted whether or not the child is a Kenyan citizen, or was born in Kenya.
  - (2) Without prejudice to the generality of subsection (1), no Court may entertain an application for an adoption order in respect of a child unless—
    - (a) the child concerned has been in the continuous care and control of the applicant within Kenya for a period of three consecutive months preceding the filling of the application; and
    - (b) the application for an adoption order is supported by a report made by a duly registered adoption society recommending that an adoption order be made.
  - (3) The report referred to in subsection (2)(b) shall contain the society's findings and recommendations in respect of the child and the applicant or applicants, as the case may be.
  - (4) The following children shall be eligible for adoption—
    - (a) a child who is an orphan and has no guardian or caregiver able and willing to take care of the child;
    - (b) a child who has been abandoned or whose parents' or guardian's whereabouts cannot be traced within a period of one year;
    - (c) children who are willingly offered for adoption by their biological parents in accordance with regulations made under this Part.
8. Under section 185, on who may apply to adopt a child, the following is the law:
- (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.
  - (6) The Court shall not make an adoption order in favour of an applicant or joint applicants if the applicant or joint applicants, or any of them—



- (a) is of unsound mind within the meaning of the *Mental Health Act* (Cap. 248);
  - (b) is incapable of exercising proper care and guardianship of a child;
  - (c) has been convicted by a Court of competent jurisdiction for any of the offences specified in the Third Schedule or similar offences;
  - (d) in the case of joint applicants, if the applicants are not married to each other;
  - (e) is a sole male applicant except where the applicant is a biological relative of the child; or
  - (f) is a foreign applicant except where the applicant is a biological relative of the child.
- (7) Notwithstanding anything contained in this section the Court may at its sole discretion decline to make an adoption order in favour of any person or persons if the Court is of the view that it is not in the best interests of the child to make the order.
- (8) Subject to the provisions of this section, an application for an adoption order in respect of a child shall be accompanied by written consents of the following persons—
- (a) a parent or guardian of the child, or any person who is liable by virtue of any order or agreement to contribute to the maintenance of the child;
  - (b) on the application of one of the spouses, the consent of the other spouse; and
  - (c) in the case of a child who has attained the age of ten years, the child himself or herself.
- (9) If the child referred to in subsection (8)(c) has a disability which restricts or impairs the child's ability to independently give his or her consent, the child shall be accorded such assistance, including the assistance of an intermediary, to facilitate his or her written consent.
9. In light with the above law, the court also perused all the documents filed in court on the consent and affidavit of fitness filed by the child's Guardian Ad Litem.
10. The Report by the Children Officer filed on 26/6/2024 certified the applicant as meeting the legal parameters to adopt the minor herein. The applicant in my view, as supported by evidence on record, has met all the legal requirements of adoption. No doubt, the Applicant has clear intention to protect, support, provide inheritance for and maintain the child as their own.
11. The commendation report by the Children's Officer and the Change Trust Adoption Society of Kenya, a registered adoption society, gave the Applicant a go ahead to adopt the minor. They describe the Applicant as committed to caring and maintaining the child and hold the view that the adoption sought will be in the child's best interest.
12. I am satisfied that they have bonded well. The minor is in a good home. I am satisfied that the child will be in a good home. The legal guardian, PWM confirmed that he signed the consent to act as a legal guardian and understood his role well.
13. Change Trust Adoption confirmed that they issued certificates confirming that the child in this matter is free for adoption. They also assessed the Applicant and found her suitable and duly counselled on adoption.
14. Having listened to the evidence and perused the requirements for adoption, I find that the amended originating summons dated 19/1/2024 is merited and as such I allow the same.
15. Thereof, the application for adoption is merited and I allow it.



## **Determination**

16. In the upshot, I make the following orders:-

- i. The Applicant is hereby authorized to adopt the child currently identified as NM.
- ii. Consent of the biological parents is hereby dispensed with as the child is abandoned.
- iii. The child shall be known as KKW.
- iv. The Registrar General is hereby directed to make the appropriate entry of KKW in the adopted Children's Register.
- v. The child KKW be presumed to be a Kenyan citizen born in Kenya and the Director of Immigration Services do issue him with a Kenyan Passport.
- vi. NWW is hereby appointed as legal guardian of the child KKW.
- vii. The child be deemed to have been born on 25/5/2019.
- viii. The guardian ad litem is hereby discharged.
- ix. The file is closed.

**DELIVERED, DATED AND SIGNED AT NYERI ON THIS 9<sup>TH</sup> DAY OF OCTOBER, 2024.  
JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

**KIZITO MAGARE**

**JUDGE**

**In the presence of: -**

Mrs. Wahome for the Applicant

Court Assistant – Jedidah

