



**In re DK alias MM (Child) (Adoption Cause 15 of 2018)
[2023] KEHC 2572 (KLR) (Family) (10 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 2572 (KLR)

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

FAMILY

ADOPTION CAUSE 15 OF 2018

PM NYAUNDI, J

MARCH 10, 2023

IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF

2001

IN THE MATTER OF ADOPTION OF BABY D K ALIAS M M (THE CHILD)

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION

BY

IN THE MATTER OF

KWM APPLICANT

JUDGMENT

1. The Applicant, KWM, *vide* Originating Summons dated November 22, 2017 has made an application for the adoption of BABY DK ALIAS MM the child herein.
2. The matter proceeded for hearing via viva voce evidence on the Teams virtual platform on the 16th of February 2023.
3. The Applicant a Kenyan Citizen, single and of the Christian faith. She avers that she has the financial means and capability to take care of the Child. She is a digital marketer, and this allows her flexibility to pursue other income generating activities, she is also a tea farmer. She has had custody of the child for a period of 7 years. She resides in Ruaka. She fully understands the consequences of an adoption order.
4. The Minor was born at Meru Teaching and Referral Hospital on April 18, 2015. Her mother abandoned her in hospital. Hospital records show that the mother was suffering from mental illness at the time.



The Child was released to Neema House Infant Rescue Centre on the instructions of the Sub County Children Officer for Imenti North. Subsequently the Child was formally committed to the institution by Order of the Children's court at Meru vide Protection and Care Case No 15 of 2015.

5. Prior to the hearing of the adoption application, Little Angels Network prepared and filed a report dated June 17, 2016 and issued a certificate serial No 1709 declaring the child free for adoption. On February 22, 2022, the Court appointed a Guardian Ad litem MM.
6. An officer the Department of Children Services, Nyaranga Odundo conducted home visits and prepared a report dated March 23, 2022. The report is countersigned by Hoyd Isadia. The report established that the child was abandoned at Meru Teaching and Referral Hospital after birth by her mother who suffered from mental illness. The matter was reported at Meru Police station under OB NUMBER 34/13/07/2015.
7. The Report further documents that vide letter dated January 25, 2016; the Police confirmed that neither the mother or other relatives of the child had come back to claim the child. For this reason, the Department of Children Services confirms the child is available for adoption. The Child was placed with the Applicant on June 24, 2016.
8. A home visit was conducted on March 22, 2022, the Child is attending school and appears well taken care. Both she and the Applicant have bonded well.

It is the opinion of the Department that the Applicant has met all the requirements for adoption as laid out in the Children's Act 2001 (now repealed) and replaced by the Children Act, 2022.

9. It is the opinion of the Children Officer that granting the orders is in the best interests of the Child.
10. The Guardian Ad Litem, MM was present in Court and presented her report dated March 25, 2021. She confirmed that she visited the Applicant and the Child at their home and observed that they have bonded well, and the child is well taken care of. She has also bonded well with the extended family. She recommends that Applicant be allowed to adopt the Baby.
11. The proposed Legal Guardians, LN and FK attended court and confirmed they are willing to take up the role of legal guardian. They are brother and sister in law to the Applicant.
12. After carefully assessing the records herein, I am satisfied that the applicant has fulfilled all the legal requirements relating to the Child's adoption. Section 186 of the Children Act, 2022 provides.
 - (1) The Court may make an adoption order on application by—
 - (a) A sole applicant; or
 - (b) Two spouses jointly.
 - (2) he 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.
13. The Applicant is aged 39 years.



14. Article 53 of the Constitution of Kenya, 2010 provides the overarching principles which must apply whenever any decision concerning a child is to be considered. It states:

A Child's Best interests are of paramount importance in every matter concerning the child.

15. This principle is restated in Under Section 8 of the Children Act, 2022 which provides;

Best interests of the child.

(1) 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.

Section 194(1)(c) of the Act also requires that if the adoption order is made, the order will be in the best interests of the child, having regard to the wishes of the child, depending on the child's age and understanding, and to the ability of the applicant to maintain and educate the child;

16. In view of the foregoing the court is of the considered view that it is in the child's best interest to be adopted by the Applicant. Accordingly, I allow the prayers sought in the Originating Summons dated November 11, 2021 and order as follows:

- i. The Applicant KWM is allowed to adopt Baby DMM alias MM.
- ii. The Child to be known as KNW.
- iii. The minor's date of Birth April 18, 2015.
- iv. LN and FK are hereby appointed as legal guardians of the Child.
- v. The Registrar be and is hereby directed to enter this adoption into the Register of Adopted Children.
- vi. The Guardian Ad Litem is hereby discharged.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 10TH DAY OF MARCH 2023.

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P M NYAUNDI

HIGH COURT JUDGE

In the presence of

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Kamenju for Applicants

Court Assistant Karani

