



REPUBLIC OF KENYA



**In re I alias IL (Child) (Adoption Cause E163 of 2021)  
[2023] KEHC 1480 (KLR) (Family) (3 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 1480 (KLR)

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

**ADOPTION CAUSE E163 OF 2021**

**MA ODERO, J**

**MARCH 3, 2023**

**IN THE MATTER OF**

**AMK ..... 1<sup>ST</sup> APPLICANT  
CWM ..... 2<sup>ND</sup> APPLICANT**

**JUDGMENT**

1. Before this court is the originating summons dated December 7, 2021 by which the Applicant AMK and CWM seek the following orders:-
  - “ 1. That AMK and CWM of Kenyan National Identity Card Numbers XXXX and XXXX respectively be authorized to adopt the child; Baby I alias I alias IL who is presumed to be a Kenyan citizen, born on the July 2, 2016.
  2. That upon adoption, the child be known as FM.
  3. That PKM of Kenyan national Identity Card Number XXXX be appointed as legal guardian of baby I alias I alias IL.
  4. That the Registrar General be directed to enter this adoption into the Register of Adoptions and a subsequent Birth Certificate do issue by the registrar of Births and Deaths.”
2. The Application was supported by the statements of even date sworn by the Applicants. The matter was canvassed by way of vive voce on the virtual platform.
3. The Applicants are a couple who got married to each in the year 2002. Their union has not been blessed by any child hence the desire of the applicants to adopt a child in order to complete their family.



4. The Applicants both confirm that they understand the legal implications of an adoption order. They undertake to accord to the subject child all rights due to a biological child including the right to inherit.

### **Analysis and determination**

5. The prerequisites which must be met before an adoption order can be made are set out in Section 184 (1) (a) and (b) of the [Children's Act 2022](#) which provides 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.”

6. The subject child was born at the Dagoretti Sub-County Hospital on July 2, 2016. A copy of the Birth Notification Serial Number XXXX is annexed to the summons (Annexure CM ‘5’). The child is therefore now aged seven (7) years old and is well above the Six (6) week age limit provided for in law.
7. Child Welfare Society of Kenya which is a Registered adoption agency have annexed to their report a copy of their certificate Serial Number XXXX dated May 14, 2017 declaring the child Free For Adoption. I am satisfied that the legal pre-requisites for an adoption order have been met.
8. The duty of this court is to analyze the evidence on record to determine whether the Applicants are suitable adoptive parents. The Applicants are both Kenyan citizens as evidenced by the annexed copies of their National Identity Cards (Annexure ‘ACM – ‘1’)
9. The Applicants are a couple who got married to each other under Kamba Customary law in the year 2002. They have annexed a joint Affidavit dated May 25, 2015 confirming the fact of their marriage (Annexure ACM – ‘2’)
10. The Applicants have also annexed a letter dated 4<sup>th</sup> August 2015 written by Susan Kingoo the Chief of Matuu location confirming that she has known the two as a married couple for the past ten (10) years. The Kenyan Law recognizes a customary marriage as a legal and valid marital union. I find that the Applicants have been in a valid marriage for the past twenty (20) years.
11. The Applicants union has not been blessed with any child. They now seek to adopt a child in order to fulfil their desire to have a child of their own.
12. The Applicants are both gainfully employed, the 1<sup>st</sup> Applicant is a Pastor whilst the 2<sup>nd</sup> Applicant is a housewife who also engages in farming activities. Together the couple realise a monthly income of approximately Kshs 20,000 which is sufficient to meet the needs of the child.
13. Additionally the 2<sup>nd</sup> Applicant rears livestock and chicken and plants food crops which are available for use by the family as food and the excess is sold for extra income. They have annexed copies of bank statements for an account held by Equity Bank. I am satisfied that the Applicants are financially stable.
14. The Applicants are both committed Christians and intend to raise the child in the Christian faith. They have annexed a letter of recommendation dated November 17, 2021 written by Nicholas Muiah the Regional Bishop of the Living Water Church International in Machakos where the Applicants have been members for the past twenty-five (25) years.



15. The Applicants were both examined by a doctor and were found to be mentally and physically fit. They have annexed copies of clearance Certificates issued to them by the Directorate of Criminal Investigations proving that neither has a criminal record.
16. The Applicants told the court that their extended families are aware of and support their intention to adopt the subject child. They have appointed the brother to the 2<sup>nd</sup> Applicant Propius Kitusya Mateta as the legal Guardian for the child. The proposed legal guardian has signed an Affidavit of consent dated December 7, 2021 confirming his willingness to act as a legal guardian for the child.
17. All in all I am satisfied that the Applicants are suitable adoptive parents.
18. The subject child is a boy child who was born on July 2, 2016 at the Dagoretti Sub-County Hospital in Nairobi County.
19. The child's biological mother GA approached CWSK and offered up the child for adoption. The mother went to the Police Station with an officer from CWSK on July 6, 2016 and confirmed that she wished to offer up her child for adoption. The matter was recorded vide OB Number 9 of July 6, 2016 (Annexure "ACM '6')
20. On April 12, 2017 Nairobi Children Court then committed the child to Mama Ngina Children's Home for Care and Protection. Thereafter on May 17, 2017 the child was placed into the custody of the Applicants under a Foster Care Agreement.
21. Section 186 (8) of the [Children Act 2022](#) provides as follows:-
  - "(8) Subject to the provisions of this section, an application for an adoption shall be accompanied by written consent of the following persons:-
    - a. a parent or guardian of the child, or any persons who is liable by virtue of any order or agreement to contribute to the maintenance of the child.
    - b. ....
    - c. ....
22. In this case the child's biological mother gave the baby up for adoption immediately after his birth. The mother confirmed before Police that her decision was made voluntarily. The mother signed the certificate dated July 6, 2016 confirming that the Memorandum of Adoption of children had been fully explained to her. The mother also signed the consent to the Adoption dated November 11, 2016. I am satisfied that the legal required consent for this adoption has been obtained.
23. In deciding upon any matter involving a child, courts are obliged to give priority to the best interests of the said child. Section 8 (1) of the [Children Act 2022](#) provides:-
  - "(8). (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;" (own emphasis)
24. This is a child who was given up for adoption. His biological mother was unable or unwilling to care for the child. He faced an uncertain future living in childrens homes and other similar institutions. This adoption allows the child the opportunity to be raised in a loving and stable home environment.



25. The child has lived with the Applicants since the year 2017 a period of five (5) years. He has undoubtedly bonded with the Applicants. This is the only family the child knows.
26. I was able to see the child online. He was a healthy and neat young boy who appeared awed by the camera but otherwise was at ease in the presence of the Applicants.
27. A home visit was conducted on March 22, 2022. The Applicants live in their own home in Kabaa Shopping Centre near Athi River in Machakos County. The Applicants live on a three acre piece of land where they have built a three-bed-roomed permanent house. The compound is well secured and has a metal gate. The home is connected to both water and electricity and was found to be spacious and a conducive environment for raising a young child.
28. I have carefully perused the reports prepared by the Adoption Agency, the Guardian Ad Litem and the Director Childrens Services. All three (3) reports were positive and all recommend the adoption.
29. In conclusion I am satisfied that this adoption does serve the best interests of the subject child. Accordingly I do allow this application and make the following orders:-
  1. The Applicants AMK and CWM are authorized to adopt the child known as Baby I alias I alias IL.
  2. Upon adoption the child will be known as FM.
  3. The Registrar General is directed to make the relevant entry in the Adopted Childrens Register.
  4. Propius Kitusya Mateta is appointed as the legal guardian for the child.

**Dated in Nairobi this 3<sup>rd</sup> day of March 2023.**

.....

**MAUREEN A. ODERO**

**JUDGE**

