



REPUBLIC OF KENYA



**In re MM (Child) (Adoption Cause E128 of 2022)
[2023] KEHC 1472 (KLR) (Family) (3 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 1472 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E128 OF 2022
MA ODERO, J
MARCH 3, 2023
IN THE MATTER OF CHILDREN'S ACT NO 8 OF 2001
AND
IN THE MATTER OF ADOPTION OF BABY MM (THE CHILD)**

IN THE MATTER OF

RNK APPLICANT

JUDGMENT

1. Before this court is the originating summons dated July 29, 2022 by which the Applicant RNK seeks the following orders:-

- “1. Spent
2. Spent
3. That the applicant be authorized to adopt MM to be known as LW.
4. That the child be presume a Kenyan Citizen by birth.
5. That the child's date of birth be March 1, 2018 and the place of birth be Mbagathi Hospital, Nairobi.
6. That the Registrar General be directed to enter the adoption in the Adopted Children Register.
7. That the Director Immigration be authorized to issue the child with a Kenyan passport.



8. That the Applicant's sister, AWK be appointed the legal guardian of the child in the event of death or incapacity of the Applicant before the child is of age or independent.
 9. That the court be please to make any further orders it deems necessary.
2. The application was supported by the statement of even date sworn by the Applicant. The matter was canvassed by way of *vive voce* evidence on the virtual platform.
 3. The Applicant is a single woman who has no biological child of her own. She seeks to adopt the subject child in order to fulfil her lifelong desire to have a child to call her own.
 4. The Applicant confirmed that she understood the legal implication of an adoption order. She undertook 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 is a girl child who was born on March 1, 2018. A copy of the Birth Notification Serial number 716xxxx is annexed to the summons (Annexure ‘RNK -1’). The child is therefore now aged four and half (4 1/2) years old and is above the six (6) week age limit provided for in law.
7. Change Trust is a registered adoption agency have annexed to their report a copy of their certificate Serial Number 00xxx dated May 8, 2019 declaring the child Free for Adoption. I am satisfied that the legal pre requisites of the an adoption order have been met.
8. The duty of this court is analyze the evidence on record to determine whether the Applicant is a suitable adoptive parent. The Applicant is a Kenyan citizen as evidence by the copy of her National Identity Card which is annexed to the summons (Annexure ‘RNK 5’).
9. The Applicant is single and has no biological child of her own. She now seeks to adopt the subject child in order to fulfil her lifelong desire to have a child to call her own.
10. The Applicant is in gainful employment. She runs a boutique and a taxi business in [particulars withhld] Muranga County. The Applicant has annexed copies of her financial documents being a statement of account with AMICA Savings and Credit Society (Annexure RNK ‘6’). She has also annexed copies of business licences issued to her by the Murang’a County Government. The Applicant realizes a monthly income of approximately Kshs 50,000 which is sufficient to enable her to provide for the needs of the child.
11. The Applicant is a Christian and intends to raise the child in the Christian faith. She was examined by a doctor and was found to be both mentally and physically fit. The Applicant has annexed a copy of the Clearance Certificate issued to her by the Directorate of Criminal Services, (Annexure ‘RNK-‘8’) confirming that she has no criminal record.



12. The applicant told the court that her family are aware of and support her intention to adopt the child. She has appointed her sister AWK as the legal guardian for the child. The said legal guardian has signed a letter of consent dated March 30, 2017 confirming her willingness to be act as the legal guardian for the child, (Annexure RNK '10').
13. All in all I am satisfied that the Applicant is a suitable adoptive parent.
14. The subject child is a girl child who was born on March 1, 2018 at the Mbagathi Hospital in Nairobi County. The biological mother of the child whose name was given as EWN voluntarily gave up the child for adoption when the baby was only one(1) day old.
15. The child was then committed to New Life Trust Home for Care and Protection. Thereafter on February 15, 2020 the child was placed into the custody of the Applicant under a Foster Care Agreement.
16. Section 186 (8) of the [Children Act 2022](#) provides that:-
 - “ Subject to the provisions of this section, an application for an adoption shall be accompanied by written consent of the following persons:-
 - a. is liable by virtue of any order or agreement to contribute to the maintenance of the child.
 - b.
 - c.”
17. In this case the biological mother of the child voluntarily gave up her child for delivery upon delivery at Mbagathi Hospital. The mother signed a consent dated March 5, 2018 confirming her decision to offer her child for adoption. The said consent appears as Annexure RNK '2') to the summons. Accordingly I am satisfied that the consent required for this adoption was obtained.
18. 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). In all actions concerning children, whether undertaken by public or
(1) 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)
19. This is a child whose biological mother was unable or unwilling to keep the child. She 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.
20. The child has lived with the Applicant for the past two (2) years. I have no doubt the two have bonded. The child views the applicant as her mother.
21. I was able to see the child online. She was a healthy happy child who cheerfully answered basic questions about herself. The child was pleased to see herself on the camera and was constantly waving at the court. I observed that the child was totally at ease in the presence of the Applicant.



22. A home visit was undertaken by the Childrens Officer. The Applicant lives in a two bed-roomed apartment in Kiharu Township in Murang'a County. The house was found to be connected to amenities like water and electricity and was found to be a conducive environment for the child.
23. I have carefully perused the reports prepared by the Adoption Society, the Guardian Ad Litem and the Director Children Services. All the three (3) reports were positive and all recommend the adoption.
24. Finally I am satisfied that the adoption does serve the best interests of the subject child. Accordingly I allow this application and make the following orders:-
 1. The Applicant RNK is authorized to adopt the child known as MM.
 2. Upon adoption the child will be known as LW.
 3. The Registrar General is directed to make the relevant entry in the Adopted Children's Register.
 4. AWK is appointed as the Legal Guardian for the child.

DATED IN NAIROBI THIS 3RD DAY OF MARCH 2023.

MAUREEN A. ODERO

JUDGE

