



**In re Baby KA (Adoption Cause 5 of 2015) [2023] KEHC 1786 (KLR) (2 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 1786 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NYERI**  
**ADOPTION CAUSE 5 OF 2015**  
**FN MUCHEMI, J**  
**MARCH 2, 2023**  
**IN THE MATTER OF ADOPTION OF BABY K A**  
  
**IN THE MATTER OF**  
**GWK ..... APPLICANT**

**JUDGMENT**

1. The Originating Summons for determination dated January 29, 2015 seeks for orders of adoption of Baby KA, that the child be known as KMK and that the Registrar General be directed to make an entry in the Adoption of Children’s Register to that effect.

**The Applicants’ Case**

2. The Child Welfare Society of Kenya gave a brief history of the child KA in their report that the biological mother of the child BA offered the child. The child’s mother informed the society that she was impregnated by a person whom she did not know he was her cousin. She stated that her cousin’s family were not willing to maintain the child and was then advised by her family to do away with the child as he was considered a taboo having been born out of an incest relationship. Ms BA further stated that her family has been supportive although from a distance because they did not want a curse to befall them. The child was born on June 7, 2012.
3. Ms BA voluntarily gave her consent relinquishing her parental rights and responsibilities over the child on September 27, 2019, after attaining the age of majority. The parents of BA and those of the father of the child gave their consent on October 8, 2019 for adoption of Baby KA The Child Welfare Society declared the child free for adoption on March 12, 2014 and gave a certificate to that effect.
4. The applicant herein has had the care and control of the child since March 13, 2014 which is a period of almost 9 years. The applicants in their affidavit in support of the Originating Summons deposed that they are husband and wife who got married under African Customary Law in 2003 and later solemnizing their marriage under Civil Law in 2014 and further that they were in good physical health and emotionally fit to look after the child as his parents. It is further deposed that the couple is



financially stable as they run businesses together. In addition the female applicant is currently carrying out farming activities on their farm. Unfortunately the husband CKM passed on in March 2020 before the case was concluded. In this regard GWK further filed an affidavit dated May 11, 2021, confirming that her husband died and that she wished to proceed with the adoption proceedings. The Director of Children and the Child Welfare Society of Kenya on direction of this court filed further reports confirming the suitability of GWK to adopt the child on her own upon the demise of her husband.

5. On September 20, 2022, one LMK was appointed the guardian ad litem on January 29, 2022.

Issue for determination

6. The main issue for determination is whether the applicant has satisfied the legal requirements under the Children's Act to be granted the adoption order.

### **The Law**

7. The preliminary requirements for the making of an adoption order are set out in Section 156(1) of the [Children's Act](#) (now repealed) which provides as follows:-

No arrangement shall be commenced for the adoption of a child unless the child is at least six (6) weeks old and has been declared free or adoption by a Registered Adoption Society in accordance with the Rules prescribed in that behalf.

8. Thus for an adoption order to ensure the following ought to be taken into consideration:-
  - a. A child must be at least six (6) weeks old and free for adoption;
  - b. The child concerned must have been in the continuous care and control of the applicant within Kenya for a period of three (3) consecutive months preceding the filing of the application; and
  - c. Both the child and the applicant have been evaluated and assessed by a registered adoption society in Kenya.
9. In the instant cause, the child was given up for adoption by his biological mother and maternal grandmother. The biological mother signed her consent to the adoption order, on September 27, 2019 upon attaining the age of majority. Thereafter, the child was placed at Springs of Life Children's Home for temporary care and protection and later committed to the said institution. The child remained at the institution until March 12, 2014 when he was placed with the applicant. The male applicant unfortunately died in March 2020 and the female applicant, GWK swore an affidavit dated May 11, 2021, confirming the death of her husband by attaching a death certificate and intimated her wishes to proceed with the adoption process considering the special circumstances of the case because the child was a boy. The court directed on July 19, 2021, that the applicant file a further affidavit annexing a copy of the death certificate of her husband, and for the Director of Children and the Adoption Society file supplementary reports on the suitability of the applicant in the absence of her late husband.
10. The law in Section 158 (2) (d) of the [Children's Act](#) (now repealed) provides:-

An adoption order shall not be made in favour of a sole female applicant in respect of a male child unless the court is satisfied that there exists special circumstances to justify the making of an adoption order.
11. This therefore gives the court unfettered discretion to grant an order of adoption to a female applicant to adopt a male child keeping into consideration the best interests of the child which is paramount.
12. The reports dated 17<sup>th</sup> January and October 28, 2022 the Director of Children's Services recommends that it would be in the best interests of the child if the applicant finalizes the adoption process and



adopt the child. The report further states that the child has lived with the applicant since March 12, 2014, which is more than seven years and that it would do the child more harm than good to uproot him from a home he has known since 2014. The report further states that the applicant meets all the conditions of a local adopter other than being a single female applicant.

13. I have taken into consideration the reports by the Director of Children's Services and the affidavits by the applicant and noted that the adoption application process was initialized by both the applicant and her late husband in 2015. Unfortunately, one of the applicants died leaving the female applicant to raise the child on her own. It was noted in the report that the applicant did not abandon the child but proceeded with the adoption proceedings considering that the child would suffer irreparably as his foster father was deceased and that the only mother he has known his whole life is the applicant. Furthermore, the child has lived with the applicant since March 12, 2014 which is about 9 years and uprooting a child from such a placement would do more harm than good. Therefore, it is my considered view that the applicant has shown exceptional circumstances in which he can adopt the male child.
14. The reports by the Director of Child Services show that the applicant has the financial capability to take care of the child; that her home environment is safe, secure and satisfactory; that the child is relating well with the applicant; that the applicant and the child are emotionally stable after the demise of the male applicant and that the applicant has not received or agreed to receive any reward in consideration for the adoption.
15. I am of the considered view that the applicant has met all the necessary legal requirements for purposes of adoption and considering the best interests of the child, the Originating Summons dated January 29, 2015 is allowed in the following terms:-
  - a. That the applicant GWK is hereby authorised to adopt Baby AK
  - b. That the consent of the biological mother is hereby dispensed with.
  - c. That Baby A.K will now be known as KMK.
  - d. That the Registrar-General do make the appropriate in the Adopted Children's Register.
16. It is hereby so ordered.

**DATED AND SIGNED AT NYERI THIS 2<sup>ND</sup> DAY OF MARCH, 2023.**

**F MUCHEMI**

**JUDGE**

**JUDGEMENT DELIVERED THROUGH VIDEO LINK THIS 2<sup>ND</sup> DAY OF MARCH, 2023**

