



**In re AD aka Abandoned Child aka A (Child) (Adoption Cause E143 of 2022)
[2023] KEHC 3546 (KLR) (Family) (20 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 3546 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

FAMILY

ADOPTION CAUSE E143 OF 2022

DKN MAGARE, J

APRIL 20, 2023

IN THE MATTER OF BABY AD A.K.A ABANDONED CHILD A.K.A BABY A (THE CHILD)

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION BY HM AND JNM

IN THE MATTER OF

HMK 1ST APPLICANT

JNM 2ND APPLICANT

JUDGMENT

1. The Child Welfare Society freed a 3 year old child for adoption. The child had been abandoned and committed to Dagorreti Children’s Centre on 27/8/2014. The Nairobi Children Court on 25/2/2025 committed the child to the same place.
2. The Child Welfare Society issued a report on 18/9/2015 recommending adoption. The child was declared free for adoption vide certificate No. xxxx.
3. The applicant were assessed on 23/6/2017 and a report dated 3/11/2017 given. The report recommend adoption. The court appointed MWG a Guardian Ad Litem in this matter on 24/11/2022. She filed a report noting that the child is now in Grade 3 and 8 years old. The report notes that the parents have bonded well with the child. The guardian Ad L item, in her report dated 30/11/2022, recommends the adoption.
4. I am satisfied that they are proper persons to adopt the child herein. The financial and social a reports are satisfying. The testimony of the 7 witnesses bear this out. PW7 was the children officer and she testified that the secretary of chirdren services recommends the adoption. The 2 proposed Legal guardians have consented to the legal guardians. Mercy Nyokabi testified on behalf of the Child



welfare Society where she stated that the child was freed on 25/9/2018. She produced the report dated 3/11/2017.

5. The secretary of children services through Ezekiel Kimani filed a report dated 10/1/2022. Report confirmed that the child was placed with the Applicants on 24/9/2015. The secretary, children service recommended the adoption. I note that the time from placement and filing of the case is almost 7 years.
6. It could be that the parents felt at home immediately the child was placed in their case. No one can be –grudge them. They deserve the child. The applicants testified and supported their application. The guardian ad litem produced the report as ordered by the court.
7. I am satisfied that the applicants have met the requirements of section 183 and 184 of the [Children’s Act](#). The said section provides as doth: -

Pre-requisites for Adoption.

- (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.
8. The applicant is not disqualified by dint of section 186(6) of the children’s act from adopting. The section provides as doth: -

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.



9. In the circumstances, I allow the application and set out the specific orders.

Determination

10. The Applicant's originating summons dated 11/8/2022 is allowed in the following terms: -
- a. HMK and JNM be authorized to adopt Abandoned baby AD AKA Abandoned child AKA baby A to be known as FDWM .
 - b. The child is presumed to be Kenya by birth
 - c. ANN and PN are hereby appointed a Legal Guardians.
 - d. The Guardian ad litem is discharged.
 - e. The Registrar General is directed to enter this adoption in the Register of Adoptions.
 - f. The Registrar of births and deaths is directed to is use the child with a birth certificate.
 - g. Director General of Immigration is authorized to issue the child with Kenyan passport.
 - h. The file is sealed and closed.

**DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 20TH DAY OF APRIL, 2023.
JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

DENNIS KIZITO MAGARE

JUDGE OF THE HIGH COURT, MOMBASA

In the presence of:

MISS ONG'ONDO for the Applicant

Court Assistant - FIRDAUS

