



**In re Baby EP (Adoption Cause E031 of 2022)
[2023] KEHC 3874 (KLR) (Family) (20 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 3874 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E031 OF 2022
DKN MAGARE, J
APRIL 20, 2023
IN THE MATTER OF THE CHILDREN ACT, 2001
AND
IN THE MATTER OF BABY E P AKA ABANDONED BABY GIRL**

**IN THE MATTER OF
AKM APPLICANT**

JUDGMENT

1. This matter came before me during the Easter Vacation wherein I was assigned to carry out Rapid results initiative in the cold City of Nairobi away from the Scotching sun of Mombasa.
2. 4 witnesses testified in the case. The Applicant stated that she made the application to expand her family. The Legal guardians consented to be before guardians. They have signed a requisite consent. The guardian ad litem produced a report dated April 11, 2023. She recommends adoption. Winfred Ikinya from the directorate of Children Service. She has a report dated April 12, 2023 where recommendation for adoption is made. I have perused the report of the secretary of children service, the Buckner Kenya adoption agency and the guardian ad litem. I note that the reports are all positive.
3. Further, the financials are equally impressive.
4. The minor has bonded well with the applicant. I note that the applicants are not disqualified by dint of section 186 (6) of the *Children’s Act* and are qualified pursuant to Section 183 of the Children’s Act.
5. The applicant meets the Pre-requisites for Adoption under section 184 of the Children’s Act, which provides as doth: -
 - (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.
6. 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.
7. I am therefore inclined to allow the Application in the following terms:-
- a. The Applicant AKM be authorized to adopt a child known as GJZ
 - b. JMM be appointed as the Legal guardian.
 - c. The guardian ad litem be discharged.
 - d. The Registrar General do make an entry of this adoption in the register of adoptions.
 - e. The Registrar of births and deaths do issue the child with a birth certificate.
 - f. The Director General Immigration be authorised to issue the child with a passport.
 - g. This 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

In the presence of:

Walubengo for the applicant

Court Assistant - Firdaus

****M.D. KIZITO, J.**

