



**In re Baby IOT alias OT alias IOP (Adoption Cause E166 of 2021)
[2023] KEHC 3875 (KLR) (Family) (20 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 3875 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E166 OF 2021
DKN MAGARE, J
APRIL 20, 2023
IN THE MATTER OF THE CHILDREN ACT, 2001
AND
IN THE MATTER OF BABY IOT ALIAS
OT ALIAS IOP**

IN THE MATTER OF

JKK 1ST APPLICANT

JWM 2ND APPLICANT

JUDGMENT

1. The Applicant JKK and JWM aged 56 and 49 years respectively testified on their amended originating summons dated 27/1/23. They were married on November 18, 1999. They are in a monogamous setting. They are financially stable. I have perused their financials and I am duly satisfied.
2. The legal guardians signed the consent. They are PGM and JMG. They understand their Roles as legal guardians. The Guardian ad litem, BWM filed a report dated 13/2/2023. The county Coordinator on behalf of the Secretary of Children service prepared a report dated 12/1/2023. They approved they and they recommend it.
3. Winfred Kinya presented a report on behalf of the secretary for Children service. While Jacqueline Wambui testified that certificate No. XXX dated 27/2/2023 was issued declaring the minor free for adoption. The minor was placed in the care of the Applicants in 2015.



4. I am satisfied that the Applicant is not disqualified is not disqualified by dint of Section 186(6) of the *Children 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.
5. The applicants have met the Pre-requisites for Adoption under section 84 of the *Children's Act, 2022*
- (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.
5. Indeed, the applicants meet the requirement of Section 183 of the *Children's Act*.
6. Having listened to the Applicants and perused the law, I am satisfied that the applicants is fit and proper persons to adopt the minor herein.

Disposition

7. The Amended originating summons dated 27/1/23 are hereby allowed in the following terms: -



- a. The Applicants, JKK and JWM be authorized to adopt IOT aka OT aka IOP to be known as BNK
- a. The Guardian ad litem be discharged.
- b. PGM and JMG be appointed jointly as the minors legal guardians.
- c. The Registrar General to enter the adoption in the Register of adoptions.
- d. The Registrar of deaths and births do issue the child with a birth certificate.
- e. The child be declared to be born on XXXX2012 at Patanisho Nursing Home, Nairobi.
- f. The child is Kenyan by birth, and the consent of the biological mater has been duly given.
- g. This file be 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:

Mr Onsongo for the Applicant

Court Assistant - Firdaus

M.D. KIZITO, J.

