



**In re KC (Baby) (Adoption Cause E149 of 2022)  
[2023] KEHC 3547 (KLR) (Family) (20 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 3547 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**FAMILY**

**ADOPTION CAUSE E149 OF 2022**

**DKN MAGARE, J**

**APRIL 20, 2023**

**IN THE MATTER OF THE CHILDREN ACT, 2001**

**AND**

**IN THE MATTER OF BABY KC**

**IN THE MATTER OF**

**DNK ..... 1<sup>ST</sup> APPLICANT**

**GNM ..... 2<sup>ND</sup> APPLICANT**

**JUDGMENT**

1. On November 16, 2022 the Court, Justice Riechi allowed the application to appoint he guardian ad litem, Pamela Shikule. She prepared a report which she submitted to this court. It is dated 27/1/2023. The directorate of Children’s Services also prepared a report dated 10/1/2023. The Report recommended the adoption.
2. The report by Buckner Kenya adoption services was prepared and filed in court. The report recommends the adoption and also recommends the Applicants. The couple has met the legal requirements to adopt a male child.
3. The financial capacity is health and acceptable. The Guardian ad litem report dated 27/1/2023 noted that the parties have bonded well with the child and the extended family.
4. The Directorate of Children Services filed a report dated 10/1/2023. It is signed by Ezekiel Kimani. It has errors in age of the parent. Both were born in 1997, making them both 46 years. The female applicant is erroneously indicated as 43. It important to correct this less someone thinks it related a different person. In their testimony they confirmed they have the child.



5. The proposed legal guardian testified and confirmed that she is known take her role as a legal guardian. The Guardian ad litem testified and produced her report while Winfred Ikinya produced the report on behalf of the secretary of Children Services. Peris Kihara from the Buckner Kenya Adoption Services confirmed that they freed the child for adoption and produced the requisite report.
6. I am satisfied that the Applicants have met requirements of Sections 183 and 184 of the *Children Act*.
7. 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.
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. I am satisfied that they meet the required to adopt. The child has also bonded well. The biological parents abandoned the minor. Consequently, I dispense with their consent as it is impossible to do so.



10. The best interests of the child is my guiding principle. Article 53 (2) of the *Constitution*. It enjoins me in matters concerning a child to have regard to the child's best interest as they are paramount. The article provides as follows: -

(2) A child's best interests are of paramount importance in every matter concerning the child.

11. I therefore allow originating summons dated 23/8/2022.

### **Determination**

12. The upshot is that the originating summons is beseeching me to allow it. I oblige and allow the same in the following terms: -

- a. The Applicants DNK and GNM be authorized to adopt Baby KC to be known as ACKN
- b. BKK and HW be appointed as Legal guardians.
- c. The Registrar General be directed to enter this adoption in the Register of Adoptions.
- d. The minor be presumed to be born in Kenya.
- e. The Registrar of birth and deaths authorized to issue the child with a birth certificate.
- f. The date of birth be declared as 11/6/2019. at Nairobi Women's Hospital.
- g. The Director General of Immigration be authorized to issue a passport to the child.
- h. This file is sealed and closed.

**DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 20<sup>TH</sup> 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 Ambaka for the Applicant

Court Assistant - FIRDAUS

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