



**In re KM alias EM (Baby) (Adoption Cause E`191 of 2022)
[2023] KEHC 3871 (KLR) (Family) (19 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 3871 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E`191 OF 2022
DKN MAGARE, J
APRIL 19, 2023
IN THE MATTER OF THE CHILDREN ACT, 2001
AND
IN THE MATTER OF BABY KM ALIAS BABY
EM**

IN THE MATTER OF

**TMM 1ST APPLICANT
JM 2ND APPLICANT**

JUDGMENT

1. The applicants testified that they sought to adopt as they have no children of their own. They are aged 55 and 54. They are well to do and are both holders of PHDs. The Guardia Ad Litem did a report dated 17/2/2023 in which she recommends the adoption. The Report refers them as T and J. I would wish that such reports be more formal.
2. Change Trust Adoption Society freed the child for adoption and approved the applicants on 26/8/2022. The Secretary of Children Services though Winfred Ikinya made a report dated 16/2/2023, in which they recommend the Adoption. Winfred Ikinya attended court and produced the report.
3. The Guardian ad litem testified as PW5 and supported the adoption. The proposed Legal Guardian confirmed that they have consented to be the legal Guardian. The male Guardian ad litem testified.
4. I have perused all the reports filed. I note that the same are all favourable.
5. The applicants are qualified under section 183 of the [Children's Act](#). 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 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.
7. The Applicants are not disqualified under section 186 (6) of the [Children's Act](#).
8. The Originating Summons dated 27/10/2022 are hereby allowed.

Determination

9. The upshot is that I allow the originating summons dated 27/10/22 in the following terms: -



- a. TMM and JM be authorized to adopt KM aka Baby EM to be known as JKKM.
- b. The child be presumed to be Kenyan by birth
- c. The Guardian ad litem be discharged.
- d. The Child's be declared to be born on 14/7/2026 at Thika Level 5 Hospital
- e. The Registrar General be directed to enter this adoption in the Adoption Register.
- f. The Registrar of births and deaths do issue the child with a birth certificate.
- g. The director General of Immigration be authorized to issue the child with a Kenyan passport.
- h. PMM and EMM be appointed the legal Guardian of the child.
- i. This file be sealed and closed.

**DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 19TH 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

