



**In re Baby A aka NWM (Adoption Cause E032 of 2022)  
[2023] KEHC 3868 (KLR) (Family) (18 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 3868 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
ADOPTION CAUSE E032 OF 2022  
DKN MAGARE, J  
APRIL 18, 2023  
IN THE MATTER OF THE CHILDREN ACT, 2001  
AND  
IN THE MATTER OF BABY A AKA NWM AND IN THE  
MATTER OF AN APPLICATION FOR ADOPTION BY ION**

**IN THE MATTER OF  
ION ..... APPLICANT**

**JUDGMENT**

1. This judgment is part of the rapid results initiative. We were called to hear family adoption matters to ease the burden of waiting. The Applicant testified that he is a Commercial Manager age 43. He is married to AM. He had made an initial application but the wife divorced. He confirmed. I take it that like all other families she was orphaned while the process was ongoing. Though he is a single male applicant, the initial assessment was the applicant with JON.
2. The Applicant divorced with the first wife leaving the minor, her adoptive daughter, with the Applicant. These are special circumstances for the adoption. The process was incomplete when the female Applicant left the male Applicant. This was before the process was complete. Though the applicant is a sole Applicant, he is not a single male. He is married and as such outside the parameter of Section 186 (6) 4 of the Children's Act
3. 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.
4. 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.
5. Further he was in a couple applicant till Divorce took away the suit sure it cannot take away the daughter too.
6. The daughters bonded with the late “adoptive” mother. This had resulted in the current wife calling her a step daughter. In that connection I am satisfied that the application is a proper one.
7. The directorate of Children Services recommended the adoption. There was a report by Children Service dated 17/2/2023, Report by guardian ad litem dated 27/2/2023KKPI Adoption report dated 13/7/2022. The applicant also married another wife who passed away on 26/3/2025.
8. He married the current wife AKN in 2018. She has consented to the adoption. They are happily married. The minor was born on 3/10/2009. The Applicant has immense resources and has children with the late second wife. That is where the minor comes in. Article 53(2) ordains the paramountcy of the best interest of the children.



9. Therefore, dismissing this originating summons will not serve any useful purpose. Article 153 (2) of *the Constitution* enjoins me in matters concerning a child to have regard to the child's best interest as they are paramount the article provides as doth: -
- (2) A child's best interests are of paramount importance in every matter concerning the child.
10. The best interest of this child demands that the minor be raised in a loving home as opposed to a life time in an institution.
11. In *MWM v MVM* [2020] eKLR, the Court, was of the view that; -
- “24. Having considered the circumstances of this case, the documentation availed by the various agencies whose reports I have analysed above, the applicant is suitable and fit to adopt the child. It would not be in the best interest to disrupt the life of the child in view of the report by the Children's Officer. The child has bonded with the applicant and her relatives. The home is safe and provides a suitable environment for the child's upbringing and growth. There is a special circumstance in this case as the child has bonded with the adoptive parent and there was no other person available or had expressed interest to adopt the child. In the best interest of the child who now knows and refers to the applicant as mother it is in his best interest that his life should not be disrupted or even return him to the Charitable Home to look for an adoptive parent other than the applicant.”
12. I also note that the Applicant fits into guideline no. 5 for adoption by single Applicants. They apply mutatis mutandis to this case. The guidelines are known as guidelines to the Adoption Committee developed by the Ministry of Gender Children and Social Development on special circumstances under which a sole female applicant can adopt a male child as doth; -
- Proposed applicant is the only person available to adopt the child.
13. The minor is now, 13. It is only 4 years to be 18 and forever be shut out. He has only known the Applicant as a father. I do not think there will be any applicant who will take a teenager home to start with teenage blues. Most applicants, I can take judicial notice require infants about 2-3 years.
14. I am satisfied from testimony that the applicant is a proper person to adopt the child herein. I allow the application.

### **Determination**

15. The upshot of the foregoing is that I allow the application in the following terms:
- a. ION be allowed to adopt baby A aka NWM to be renamed ENO.
  - b. The place of birth be Thika District Hospital on 3/10/2009 as a Kenyan Citizen by birth.
  - c. The Guardian ad litem is discharged.
  - d. ENN and STM be anointed as the legal guardians.
  - e. The Registrar General do enter this adoption in the registrar of adoption.
  - f. The Director General Immigration to be authorized to issue the passports to the child.
  - g. This file be closed and sealed



**DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 18<sup>TH</sup> DAY OF APRIL 2023.**

Judgment delivered through Microsoft Teams Online Platform.

**DENNIS KIZITO MAGARE**

**JUDGE**

**In the presence of:**

Miss Kimenyi for the applicant

Court Assistant - Firdaus

