



**In re Baby YM (Minor) (Adoption Cause E181 of 2022)
[2023] KEHC 18228 (KLR) (Family) (18 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 18228 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E181 OF 2022
RL KORIR, J
APRIL 18, 2023**

IN THE MATTER OF

**SPG 1ST APPLICANT
FAF 2ND APPLICANT**

JUDGMENT

1. The originating summons before me dated September 17, 2022 seeks the following orders: -
 - i. That the applicants, SPG and FAF, be allowed to adopt the child currently identified as YM
 - ii. That henceforth, the child be renamed as YS.
 - iii. That TAA be appointed as legal guardian of the child, in the event that the applicants herein are incapacitated or in any way unable to discharge their parental obligations.
 - iv. That the guardian *ad litem* be discharged
 - v. That the registrar general be directed to make the appropriate entries in the adopted children's register.
 - vi. That this court do issue such further orders as are in the interest of justice.
2. The summons is supported by the joint statement of the applicants dated September 17, 2022 and their joint affidavit sworn of even date.
3. The applicants are married as evidenced by their mushim marriage certificate issued on February 14, 2022. The Minor was the biological child of the 2nd applicant and MSH (now deceased) and was born on April 22, 2005 as evidenced by the birth certificate serial No 136399 issued on March 9, 2006 annexed to the application.



4. The application was canvassed before me on April 13, 2023 when the applicant appeared together with the minor on the court's virtual platform.
5. The 2nd applicant, FAF (W1) testified that she was 39 years old and married to the 1st applicant. That the minor Y (now aged 17) was her biological child and that Y's father M passed away and she now wished her present husband S to adopt him.
6. SG (W2) testified that he was married to the 2nd applicant and wished to formally adopt Y, whom he described as his son. He said that he was 54 and had a biological daughter aged 11 who lived with her mother in Kenya and who was aware of his intention to adopt the two children.
7. The minor YM (W3) told the court that he agreed to the adoption and was happy with the arrangement.
8. The guardian ad litem JN(W4) told the court that he had done his investigation and filed his report dated March 13, 2023 and that he recommended the adoption.
9. Mary Karimi (W5) of Buckner Kenya Adoption Services told the court that they did home assessment and filed their report recommending the adoption.
10. The proposed legal guardian TA(W6) stated that the 2nd applicant was his sister and he understood his role and responsibilities in respect of the adopted child.
11. The applicants' counsel Ms Kimenyi drew the attention of the court to the report by the children's department on record. She also urged an additional prayer for extension of parental responsibility as the minor would soon be turning 18. She urged the court to consider the application urgently.

Analysis And Determination

12. The governing law in this application is the Constitution and the Children's Act 2022. Article 53 (2) of the Constitution which provides: -
A child's best interest are of paramount importance in every matter concerning the child.
13. Section 8(1) of the Children Act 2022 provides: -
“(8). (1) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies-
 - a. the best interests of the child shall be the primary consideration;” (own emphasis)
14. Section 184(1) of the Children's Act 2022 provides as follows: -
“(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.”
15. I have carefully considered the application the evidence adduced and the reports filed.



16. With respect to the minor, he is now aged 17 and is the biological child of the 2nd applicant. His birth certificate has been displayed. The 2nd applicant being the mother has given her consent for the 1st applicant to adopt as required by law. The child himself being 17 has given his consent to the adoption. Buckner Kenya Adoption Services, an Adoption Society made a report declaring the child free for adoption and issued the certificate thereof serial No xxxx dated September 9, 2022. It has been proved through the testimony of the 2nd applicant and death certificate No xxxx issued on July 2, 2009 and annexed to application that the biological father of the child is now deceased.
17. I am therefore satisfied from the evidence laid out above that the minor was free for adoption.
18. With respect to the applicants, the various reports have recommended them as suitable adoptive parents. For the 2nd applicant, she is the biological mother and therefore no issue arises. For the applicant, he has been married to the 2nd applicant for over a year as evidenced by their marriage certificate issued on February 14, 2022 It was evident from the reports that the children of the 2nd applicant Y and N had bonded well with him and called him dad. The minor told the court that the 1st applicant provides for them and loves them.
19. I therefore find the 1st applicant fit to adopt the child. I further find that the adoption being a kinship adoption was in the best interest of the child as the applicants were already married to each other.
20. The applicant's counsel made an oral application anchored on the prayer 6 that the court makes an order to extent parental responsibility as the child was about to turn 18 and was still school going. I think the same is a merited.
21. In the end, I grant the following orders: -
 - i. The applicants, SPG and FAF, are authorized to adopt the child currently identified as YM
 - ii. Henceforth, the child be renamed as YS.
 - iii. TAA be and is hereby appointed as legal guardian of the child, in the event that the applicants herein are incapacitated or in any way unable to discharge their parental obligations.
 - iv. The guardian *ad litem* is hereby discharged
 - v. The registrar general is directed to make the appropriate entries in the adopted children's register.
 - vi. Parental responsibility over the child is extended to 21 years or until further orders of the court.

Orders accordingly

JUDGEMENT DELIVERED, DATED AND SIGNED AT BOMET THIS 18TH DAY OF APRIL, 2023.

.....

R. LAGAT-KORIR

JUDGE

JUDGEMENT DELIVERED IN THE ABSENCE OF THE APPLICANTS. SIELE (COURT ASSISTANT)

