



**In re TNK alias AK (Baby) (Adoption Cause E062 of 2021)
[2023] KEHC 3548 (KLR) (Family) (18 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 3548 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E062 OF 2021
DKN MAGARE, J
APRIL 18, 2023
IN THE MATTER OF THE CHILDREN ACT, 2001
AND
IN THE MATTER OF BABY TNK
ALIAS AK**

IN THE MATTER OF

MMM 1ST APPLICANT

MKM 2ND APPLICANT

JUDGMENT

1. The applicant MMM aged 63 years and MKM aged 59 years old applied on for adoption of the minor herein. They were married on May 28, 1993. They are just closing the rubicon. The male applicant is turning 64 in May, 2023.
2. The children department through the office of the secretary for children service gave a report dated January 13, 2023 where they recommend the adoption having passed qualifications in section 186(1) b of the *Children's Act*.
3. The applicant are 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 applicants appointed JJK and EWK. They confirm that they are willing to be legal guardians. They signed requisite contracts change trust declared the child for adoption on January 30, 2019. Contact by the biological mother was given. I have reviewed the financial wherewithal of the applicants and I am happy with the results.
5. I have also perused reports by the adoption agency, guardian *ad litem* and the secretary of the children services. They support and recommend the adoption. 5 witnesses testified in this matter confirming that the relevant recommendation were given.
6. I find and hold that the applicants have met the threshold set out in section 184 and 186 of the *Children's Act*. Section 184 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.
7. The applicants are determined having pursued this adoption since 2015. I find them suitable and the application merited.
8. I allow them adopt. I make the orders: -
- a. MMM and MKM be allowed to adopt baby TNK aka AK to be known as LMM.
 - b. The child be presumed to be Kenya by birth.
 - c. Date of birth be declared as March 28, 2018 and place of birth as Kasarani Maternity and Nursing Home, Nairobi.
 - d. The Registrar General is directed to enter this adoption into the Register of Adoption.
 - e. The Director General Immigration to be authorized to issue the child with a Kenyan passport.
 - f. The guardian *ad litem* be discharged.
 - g. This file be closed and sealed.



**DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 18TH 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 /Steve

M.D. KIZITO, J.

