



REPUBLIC OF KENYA



**In re RMM (Baby) (Adoption Cause E130 of 2022)
[2023] KEHC 17441 (KLR) (Family) (12 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 17441 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E130 OF 2022
DKN MAGARE, J
APRIL 12, 2023
IN THE MATTER OF THE CHILDREN'S ACT NO. 29 OF
2022
AND
IN THE MATTER OF RMM
RE BABY**

JUDGMENT

1. The Applicant filed the Originating Summons dated July 27, 2022. Vide Chamber Summons dated the same day the Applicant applied to have VMM as the Guardian *Ad litem* and for the Director of Children service to compile the requisite report. accompanied with Chamber Summons dated the same date.
2. On November 24, 2022 the Court appointed the Guardian *Ad litem* as prayed by the applicant herein. Subsequently, the Guardian *Ad litem* filed a report dated January 17, 2023 the report was positive.
3. On February 7, 2023 the Children Services made a report on the applicant. Although parts of it refer the Applicant as Penia. It is definitely a typo.
4. The Directorate of Children Service noted the KKPI Certificate is indicated. They however confirmed that the child is free for adoption. The KKPI adoption society gave its report dated November 21, 2022. The adoption of a single made child done by a woman is done under special circumstances. This was under the *children's act 2001* (now repealed).
5. In this matter though not said, can gather that the Applicant's previous marriage's irreconcilable differences arose from lack of a male child.



6. The Applicant already has another child a daughter. I am unable to find reasons not to allow the Applicant adopt only for the issue on male child. *In Re of FA (Baby)* (2021) eKLR, the Court, JN Mulwa stated,

“It is common knowledge and I stand corrected, if not so, the boy children in the Children’s homes are not the first option for adoption by single women and they tend to stay there for long period and often the man applicant married couples are the main applicants...”

7. This is also in line with Article 53(2) of the *Constitution* where only the best interests of the child are considered. In this case, do we send the child back to the children’s home or give the child to a loving mother.

8. I note that the adoption society was satisfied. I am equally satisfied that it is in the best interest for her to adopt the child. This is also in the will guidance No 3 and Children’ rights as seen in Article 3 of the *UN Convention on the rights of the child*. The said article provides as doth:

“1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.”

9. I am persuaded that the court will act on the best interest of the child having regard to the circumstances of the case. The special circumstances in this cause is that the Applicant has another child whom she is willingly exercising parental responsibility.

10. Luckily the requirements restricting adoption by single females have been removed by dint of section 186 (6) of the *children’s act, 2022*. It provides: -

“6) 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.”

11. It has never been said that single female applicant should not adopt male children. It is that these should be special circumstances. In this case there exists such circumstances. (See *MWM Vs MUM* (2021) eKLR.
12. In any case the child has bonded with the Applicant. It is not in their best interest to separate the two. The court in *In Re MEO (baby)* [2021] eKLR, stated as doth: -

“it will not be in the best interests of the child to separate him from the adoptive family which has fully bonded with him. The baby has somewhere to call home having been rejected by the community.”
13. In any case, the fear of such restrictions is now past. The law recognizes that maternal instincts supersede any other fears the people may have. The minor has a chance, to have a mother. I will not allow him to be rejected again. Let him be with the mother. the new mother.
14. I have seen Certificate No xxx from KKPI Adoption Society dated August 26, 2020 and I am satisfied. There was also testimony from the Institution to that effect.
15. The age difference is sufficient in the circumstances. I have seen the financial records and evidence of ownership of law. I am satisfied that the Applicant has met the threshold for grant of the orders sought. I have heard a total of 6 witnesses.
16. PW1 the Children’s Officer confirmed that they recommend the adoption. The Report dated February 7, 2023 was produced. The Legal Guardian confirmed that she filed a report date 17/1/2023. The Applicant testified and supported her Originating Summons.
17. Jackie Wangui produced reports from the society and the Certificate freeing the child for adoption. The Legal Guardian testified and confirmed they consented to be Legal Guardian. The Applicant is 35 years old. The child is about 2 years. The age difference exceeds 21 years as per the requirements of section 186(2) b of the *Children’s Act, 2022*.
18. In the circumstances I am satisfied that the application be allowed.

Determination

19. I allow the Originating Summons dated July 27, 2022 in the following terms: -
 - a. The Applicant be authorized to adopt baby NM a minor who is to be known as NOM.
 - b. The Registrar General be directed to enter this adoption into the Register of adoption.
 - c. DO and RNN be appointed as Legal Guardians.
 - d. The child be presumed to have been born in Kenya and to be Kenyan.
 - e. The Registrar of Birth and Deaths to issue a Birth Certificate to the minor.
 - f. The Director of Immigration be authorized to issue a passport.to the child.
 - g. The Guardian *Ad litem* be discharged.
 - h. This matter be sealed and closed.



**DELIVERED, DATED AND SIGNED AT NAIROBI ON THIS 12TH DAY OF APRIL, 2023;
JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

HON. MR. JUSTICE DENNIS KIZITO MAGARE

JUDGE OF THE HIGH COURT, NAIROBI

In the presence of;

Miss Wairimu for the Applicant

Steve Buoro – Court Assistant

