



**In re Baby JGN aka JGM (Child) (Adoption Cause E168 of 2022)  
[2023] KEHC 18395 (KLR) (Family) (19 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 18395 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
ADOPTION CAUSE E168 OF 2022  
MA ODERO, J  
MAY 19, 2023  
IN THE MATTER OF CHILDREN'S ACT NO 8 OF 2001  
AND  
IN THE MATTER OF ADOPTION OF BABY JGN AKA JGM (THE CHILD)**

**IN THE MATTER OF**

**SM ..... 1<sup>ST</sup> APPLICANT**

**ENG ..... 2<sup>ND</sup> APPLICANT**

**JUDGMENT**

1. Before this court is the originating summons dated September 6, 2022 by which the applicants SM and ENG seek the following orders:-
  1. That the applicants be authorized to adopt the child; Baby JGN aka JGM who is presumed to be a Kenyan citizen, born on the July 1, 2012.
  2. That upon adoption, the child be known as JGM
  3. That the consent of the father be dispensed with pursuant to section 159(1) of the *Children's Act*.
  4. That MGG of Kenyan National Identity Card Number 34XXXX48 be appointed as legal Guardian of the child; JGN a.k.a JGM.
  5. That the Registrar General be directed to enter this adoption into the Register of Adoptions and a subsequent Birth Certificate do issue by the Registrar of Births and Deaths.
  6. That the Director of Immigration be authorized to issue the child; JGN a.k.a JGM with a Kenyan passport.



2. The summons was supported by the statement of even date sworn by the applicants. The matter was canvassed by way of *Vive Voce* evidence on the virtual platform.
3. The applicants are a couple who got married to each other in the year 2018. The couple have two (2) children together. The couple reside and work in the United Kingdom. They now wish to adopt the subject child who is the biological child of the 2<sup>nd</sup> applicant born out of a previous relationship.
4. The applicants both confirmed to court that they understand the legal implications of an adoption order. They both undertake to accord to the subject child all rights due to a biological child including the right to adopt.

### **Analysis and Determination**

5. I have considered the application for adoption, the evidence adduced in support thereof as well as the various reports filed in court.
6. The prerequisites for before an adoption order can be made are set out in section 184 (1) (a) and (b) of the *Children's Act* 2022: -
  - “(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.”
7. The subject child was born on July 1, 2012. He is now aged Ten and half (10 ½) years old is well above the six (6) week age limit provided for in law.
8. Kenya Children's Home Adoption Society which is a registered Adoption Agency have annexed to their report the original copy of their certificate Serial Number 1912 dated December 18, 2019, declaring the child Free For Adoption. Accordingly I am satisfied that all the legal prerequisites for adoption have been met.
9. The duty of this court is to analyze the evidence on record to determine whether the applicants are suitable adoptive parents. The applicants are both Kenyan citizens who are currently resident in the United Kingdom. The applicants have annexed to the summons copies of their Kenyan national Identity Cards. (Annexure “SMENG-2”)
10. The couple began to cohabit as man and wife in the year 2013. They later solemnized their union on May 18, 2018. A copy of their Marriage Certificate serial Number 32XXX7 is annexed to the summons (Annexure “SMENG-3”). Their union has been blessed with two (2) children aged Seven (7) years and one and half (1½) years old. They now wish to adopt the biological child of the 2<sup>nd</sup> applicant in order to make him a full member of their family.
11. The applicants as stated earlier both reside in the United Kingdom. The 1<sup>st</sup> applicant works as a driver with an Chauffeur Company whilst the 2<sup>nd</sup> applicant is a homemaker. Annexed to the summons are copies of bank statements for an account held by the 1<sup>st</sup> applicant at NatWest Bank in the U.K. (Annexure “SMENG-4”). I find that the applicants are financially stable and have sufficient means to provide for their children.



12. The applicants were both examined by a Doctor and were found to be both mentally and physically fit. They have annexed copies of clearance certificate issued to the 2<sup>nd</sup> applicant by the Director of Criminal Investigations proving that she has no criminal record. The 1<sup>st</sup> applicant has annexed a Basic Disclosure issued by CRB DIRECT dated 8<sup>th</sup> November 2019 indicating that he has no previous convictions [Annexure SM11(a)]
13. The applicants told the court that their extended family are aware of and support their intention to adopt the subject child. They have appointed 2<sup>nd</sup> applicant's sister as the legal Guardian for the child. The proposed legal Guardian MGG has signed a consent dated September 23, 2022 indicating her willingness to act as the legal Guardian for the child.
14. All in all I am satisfied that the applicants are suitable adoptive parents.
15. The subject child is the biological son of the 2<sup>nd</sup> applicant the result of a previous relationship. The child was born on July 1, 2012 at the St. Mary's Mission Hospital. A copy of the child's Birth Certificate Serial Number 11XXX07 is annexed to the summons (Annexure "SMENG-1").
16. The 2<sup>nd</sup> applicant stated that the child's biological father has played no role in the life of the child having abandoned her when the child was born. The 2<sup>nd</sup> applicant then proceeded to raise the child as a single Mother with the help of her mother and later with the assistance of the 1<sup>st</sup> applicant.
17. In view of the fact that the child's biological father has played no role in his life, (I note that the name of the Father is not included in the child's birth Certificate). I find that the Father has effectively abandoned the child. Accordingly, I waive the requirement for consent of the child's biological father for this adoption.
18. In deciding upon any matter involving a child, courts are obliged to give priority to the best interests of the said child. 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)
19. The subject child is the biological child of the 2<sup>nd</sup> applicant. The 1<sup>st</sup> applicant who is the legal husband of the 2<sup>nd</sup> applicant wishes to adopt the child in order to give him a home and an identity as well as to incorporate the child as a full member of their family.
20. This therefore is a kinship adoption which is provided for by section 193 of the [Children Act](#) 2022. The child will remain within the same family unit and will retain contact with the family he has known all his life.
21. "Section 186(8) (c) of the [Children Act](#) 2022 provides as follows:-
  - (8) Subject to the provisions of this section, an application for an adoption order in respect of a child shall be accompanied by written consents of the following persons—
    - (a) a parent or guardian of the child, or any person who is liable by virtue of any order or agreement to contribute to the maintenance of the child;



- (b) on the application of one of the spouses, the consent of the other spouse; and
- (c) in the case of a child who has attained the age of ten years, the child himself or herself.” [own emphasis]

- 22. The court was able to see and interview the child online. He was a healthy young boy who confidently answered the questions put to him by the court. The child confirmed that the 2<sup>nd</sup> applicant was his mother whilst the 1<sup>st</sup> applicant is his step-father. The child confirmed that he has given his consent to the adoption and indeed appeared to be very excited to join his family.
- 23. In addition the child has given written consent which written consent was witnessed by his maternal Grand-Mother MMK. I am satisfied that the child has given consent to adoption as required by section 186(8)(c) of the Act.
- 24. At the present time the child resides with his maternal Grand Parents in Bahati Estate in Nairobi. The child is enrolled in school and is currently in Grade 5. His school fees and other maintenance costs are met by the applicants.
- 25. A Home visit was conducted by the children officer. The house is a three bed-roomed home in a secure compound and was found to be a suitable environment for the child.
- 26. I have carefully perused the reports filed by the Adoption Agency, the Guardian *Ad Litem* and the Director Children’s Services. All three (3) reports were favourable and all recommended the adoption.
- 27. Finally I am satisfied that this adoption does serve the best interest of the child. Accordingly I do allow this application and make the following orders:-
  - (1) The applicants SM and ENG are authorized to adopt the child known as JGN.
  - (2) Upon adoption the child will be known as JGM
  - (3) The Registrar-General is directed to make the relevant entry in the Adopted Children’s Register.
  - (4) MGG is appointed as the legal Guardian for the child.

**DATED IN NAIROBI THIS 19<sup>TH</sup> DAY OF MAY, 2023.**

.....  
**MAUREEN A. ODERO**  
**JUDGE**

