



**In re JG alias JGM (Child) (Adoption Cause E169 of 2022)
[2023] KEHC 17621 (KLR) (Family) (15 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 17621 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E169 OF 2022
MA ODERO, J
MAY 15, 2023
IN THE MATTER OF CHILDREN’S ACT NO 8 OF 2001
AND
IN THE MATTER OF ADOPTION OF BABY JG ALIAS JGM (THE CHILD)**

IN THE MATTER OF

KM 1ST APPLICANT

JN 2ND APPLICANT

JUDGMENT

1. Before this Court is the Originating Summons dated September 20, 2022 by which the Applicants KM and JN seek the following orders:-

- “1. That the Applicants be and are hereby authorized to adopt the child currently known as JG .
2. That if the adoption order is granted the said child is thereafter known as JGM .
3. That the child’s date of birth be declared to be August 10, 2008 and his place of birth to be declared to be Our Lady of Lourdes Mwea Hospital, Kirinyaga County.
4. That the minor be considered as a Kenyan Citizen.
5. That the consent of the biological father of the child be and is hereby dispensed with since he abandoned the child since birth.



6. That IWG and PKK may be appointed the Legal Guardian of the child in the event of death of the Applicants or incapacity of the Applicants rendering her un-available or incapable of taking care of the child.
 7. That the Registrar General be directed to make appropriate entries in the Adopted Children's Register".
2. The application 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 in the year 2017. Their union is blessed with three (3) children. The Applicants now wish to adopt the subject child who is a Nephew to the 2nd Applicant.
 4. The Applicants both confirm that they understand the legal implications of an adoption order. They undertake to accord to the subject child all rights due to a biological child including the right to inherit.

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 is a boy child who was born in Kirinyaga County on August 10, 2008. A copy of the Birth Certificate Serial Number xxxx appear as Annexure JNW '6' to the summons. The child is now aged fourteen and a half (14½) years old and 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 a copy of their Certificate Serial Number xxxx dated August 19, 2022 declaring the child Free For Adoption. I am satisfied that the legal requirements for an adoption order 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.
10. The Applicants are both Kenyan Citizens as evidenced by the copies of their National Identity Cards which have been annexed to the Summons (page 22 – 23).
11. The Applicants are married couple who solemnized their union on October 6, 2017. A copy of their Marriage Certificate Serial Number xxxx is annexed to the Summons (Annexure 'JNW 9').
12. The couple have three biological children aged 11 years, 6 years and 3 years old. Copies of the Birth Certificates of their three children have been annexed to the Summons (Annexure 'JNW – 8').
13. The Applicants now wish to adopt the Subject child who is a Nephew to the 2nd Applicant being the son of the 2nd Applicant's late brother. The Applicant told the court that the child's parents are both deceased. That they took the child into their home in the year 2020 and have been caring for him and



providing for all his needs. They wish to adopt the child in order to make him a full member of their family.

14. The Applicants are both gainfully employed. The 1st Applicant employed by [Particulars withheld] as Head of Project. He has annexed a copy of his payslip as proof of employment (Annexure 'JNW – 10').
15. The 2nd Applicant runs an Air Band and B business. The couple also own a parcel of land in Ruiru. I am satisfied that the Applicants are financially secure and have the means to provide for the needs of the child.
16. The Applicants are both Christians and intend to raise the child in the Christian faith. They have annexed to the summons a copy of a letter of recommendation written by Pastor Susan Wanjira of Parklands Baptist Church where the Applicants worship (Annexure 'JNW – 12')
17. The Applicants were both examined medically and were found to be mentally and physically fit. They have annexed copies of Clearance Certificates issued to both by the Directorate of Criminal Investigations confirming that neither Applicant has a Criminal record. (Annexure 'JNW – 11').
18. The Applicants confirms that their extended family are aware of and support their intention to adopt the subject child. They state that their biological children have embraced the child as their brother.
19. The Applicants have appointed their cousins IW and PKK as the Legal Guardians for the child. The proposed Legal Guardians have both signed a consent dated March 30, 2022 confirming their willingness to act as the Legal Guardians for the child.
20. All in all, I find that the Applicants are suitable adoptive parents.
21. The subject child is a fourteen (14) years old boy who was unfortunately orphaned at a young age. The child's father JGW passed away on August 10, 2012. A copy of the Death Certificate Serial Number xxxx (Annexure 'JNW – 7') is annexed to the Summons. The child's mother ENM passed away on January 18, 2014. A copy of her Death Certificate Serial Number xxxx is also annexed to the Summons.
22. Following the demise of his parents the child initially lived with his maternal parents. However, the grandparents were aging and following an accident involving his maternal grandmother the Applicants stepped in and took the child into their home.
23. 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)

24. This is a child who unfortunately suffered the loss of both his parents. His grandparents are no longer in a position to care for him. The 2nd Applicant who is the child's Aunt and her husband now wish to adopt the child in order to provide him with a stable home environment.

(2) Section 186 (8) of the [Children Act](#) 2022 provides for consent to adoption 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)
 - (c) In the case of a child who has attained the age of ten years, the child himself or herself (own emphasis)
25. The child’s maternal grandparents who have been his guardians have both given their consent to this adoption. The grandfather JMK and the grandmother WMM have each signed a consent dated June 14, 2022 (Annexure ‘JNW – 4’).
26. I was able to interview the child virtually. He was a healthy confident young man who readily answered all the questions put to him by the court. The child confirmed that he is comfortable living with the Applicants and their family. He stated that he was willing and eager to be adopted by the couple. Annexed to the Summons is the child’s written consent dated August 5, 2022 (Annexure ‘JNW – 5’). Accordingly, I am satisfied that all the consents required for this adoption have been sought and obtained.
27. The child has lived with the Applicants since the year 2020. He has adapted to his new surroundings and has bonded with the Applicants and their children.
28. A home visit was conducted on March 17, 2022. The Applicants reside in a three bed-roomed house in Thome Estate. The home was found to be spacious enough to accommodate the entire family and was a suitable environment in which to raise the child.
29. This is a kinship adoption which is provided for by Section 193 of the *Children Act* 2022. The child will remain in the same family unite and will have regular contacts with his blood relatives.
30. I am satisfied that the adoption will serve the best interest of the subject child. I therefore, allow this application and make the following orders:-
1. The Applicants KM and JN are authorized to adopt the child known as JG .
 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. IW and PKK are appointed as the Legal Guardians for the child.

DATED IN NAIROBI THIS 15TH DAY OF MAY, 2023 .

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MAUREEN A. ODERO

JUDGE

