



REPUBLIC OF KENYA



**In re LK (Child) (Adoption Cause E125 of 2022)  
[2023] KEHC 17623 (KLR) (Family) (15 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 17623 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
ADOPTION CAUSE E125 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 LK (THE CHILD)**

**IN THE MATTER OF**

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

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

**JUDGMENT**

1. Before this court is the originating summons dated July 20, 2022 by which the applicant MKN and PWK seek the following orders:-
  - “1. That the applicants be hereby authorized to adopt Baby LK and the child be called LK henceforth.
  2. That the Registrar-General do make the appropriate entries in the adopted children’s register in respect of Baby LK .
  3. That DMM and JWK be appointed the legal guardians of the minor herein.
  4. That the court does issue such other orders as may be necessary in the best interest of the child.
2. The application was supported by the statement of even date sworn by the applicants.
3. The matter was canvassed by way of *vive voce* evidence on the virtual platform.



4. The applicants are a couple who got married in the year 1999. The couple have five (5) children who are all adults living independent lives.
5. The applicants wish to adopt the subject child who is their grandson being the child of their son.
6. The applicants both confirm that they understand the legal implications of an adoption order. They undertake to accord the subject child all rights which including the right to inherit.

### **Analysis and Determination**

7. I have considered the application for adoption, the evidence adduced in support thereof as well as the various reports filed in court.
8. 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.”
9. The subject child is a boy-child who was born on October 23, 2008. A copy of his birth certificate serial number xxxx is annexed to the summons. (Exhibit 1). The child is therefore now aged fourteen and a half (14 ½) years old and is way above the six (6) week age limit provided for in the law.
10. KKPI Adoption Society which is a registered Adoption Agency have annexed to their report a copy of their certificate serial number xxxx dated November 12, 2021 declaring the child free for adoption. I am satisfied that the legal prerequisites for an adoption order have been met.
11. The duty of this court is to analyze the evidence on record to determine whether the applicants are suitable adoptive parents.
12. The applicants are both Kenyan citizens as evidenced by the copies of their national identity cards which are annexed to the summons (Exhibit 4).
13. The couple originally lived in Kenya but have now relocated to Texas USA where they reside and work for gain.
14. The couple got married December 4, 1999. A copy of their marriage certificate serial number xxxx is annexed to the summons. Their union has been blessed with five (5) children who are now all adults living independent lives.
15. The applicants now wish to adopt the subject child who is their grandson. They state that the child's parents are struggling financially and are not able to provide for the needs of their children. That it is the grand-parents who have been providing money for the education and upkeep of the minor.
16. As stated earlier the applicants are both Kenya citizens who now reside in the USA. They are both gainfully employed in the USA. They both work for the State of Texas as [particulars withheld].
17. The couple earn a joint monthly income equivalent to approximately Kshs 450,000 which is sufficient to provide for the needs of the child. The applicants have annexed to the summons copies of their



bank statements held at the Community Service Credit Union. I am satisfied that the applicants are financially stable.

18. The applicants are both christians and intend to raise the child in the christian faith. They were both examined by a doctor and were found to be physically and mentally fit.
19. The applicants have annexed copies of clearance certificates issued to them by the Directorate of Criminal Investigations proving that neither have a criminal record.
20. “Section 186(8) (a) of the *Children Act* 2022 provides that –
  - (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]
21. The biological parents of the child PNK and MWK both testified in this matter. They confirmed that the applicants are the grandparents of the child. The parents state that they are both casual labourers and are having great difficulties in providing for the needs of the two (2) sons. They state that it is the applicants who have been assisting them to provide for the needs of the child.
22. Both parents of the child confirm that they are aware of and fully support this application for adoption. They each confirm that they are aware that an adoption order once made is irreversible. The parents of the child have each signed a consent letter dated October 15, 2021 (Exhibit 2). I am satisfied that section 186(8)(a) of the Act has been complied with.
23. The applicants told the court that their other children are all aware of and support their intention to adopt the subject child. PW 10 ZNK , PW11 PK and PW12 JK who are all children of the Applicants gave evidence in court. They all gave consent to the adoption of the subject-child by their parents.
24. The applicants have appointed their son and daughter in law as the legal guardians for the child. The proposed legal guardians JK and DMM have both signed a consent dated July 20, 2022 confirming their willingness to be appointed as the legal guardians for the child.
25. All in all I am satisfied that the applicants are suitable adoptive parents.
26. 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)
27. The subject child is a fourteen (14) year old boy who is the grand-child of the applicants. The child currently lives with his biological parents who are struggling to provide for their children.



28. “Section 186(8) (a) of the *Children Act* 2022 provides that –
- (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]
29. I was able to see the child online. He was an articulate young man who confirmed to the court that the applicants were his paternal grandparents and he knew them well. The child confirmed that he was aware of the applicants intention to adopt him and stated that he fully consents to the adoption. The child has also written a letter of consent dated October 22, 2021. I am satisfied that the child has voluntarily given his consent as required by law.
30. 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 unit and will have regular contact with his blood relatives.
31. A home visit was conducted at the home where the child lives with his parents in Joska Estate, [particulars withheld] township. The home is a two bedroomed house.
32. I have carefully considered the reports prepared by the adoption agency the guardian ad litem and the Director Children Services. All the three reports are positive and all recommend the adoption.
33. Finally I find that this adoption will serve the best interests of the subject child. Accordingly I allow this application and make the following orders:-
- (1) The applicants MKN and PWK are authorized to adopt the child known as Baby LK .
- (2) Upon adoption the child will be known as LK .
- (3) The Registrar-General is directed to make the relevant entry in the adopted children’s register.
- (4) JWK and DMM are appointed as the legal guardians for the child.

**DATED IN NAIROBI THIS 15<sup>TH</sup> DAY OF MAY, 2023.**

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**MAUREEN A. ODERO**

**JUDGE**

