



REPUBLIC OF KENYA



**In re RM (Minor) (Adoption Cause E231 of 2022)
[2023] KEHC 20052 (KLR) (Family) (22 June 2023) (Judgment)**

Neutral citation: [2023] KEHC 20052 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E231 OF 2022
PM NYAUNDI, J
JUNE 22, 2023
IN THE MATTER OF THE CHILDREN'S ACT, 2022 & ADOPTION RULES
AND
IN THE MATTER OF ADOPTION OF BABY RM (MINOR)
AND
IN THE MATTER OF AN APPLICATION BY ENA-THE APPLICANT
JUDGMENT**

1. The Applicant, ENA vide Originating Summons dated December 14, 2022 has made an application for the adoption of baby RM the child herein. The applicant is not married. She does not have children of her own and is motivated by the need to provide a loving home for the child.
2. The matter proceeded for hearing *via viva voce* evidence on the Teams virtual platform on the 15th of June 2023.
3. The Applicant is Kenyan Citizen and of the Christian faith. She avers that she has the financial means and capability to take care of the Child. The applicant is Pharmacist at (particulars withheld). She has had custody of the child since March 8, 2022. She resides in Lavington, Nairobi. She fully understands the consequences of an adoption order.
4. The child was born on October 17, 2021. She was born to MK and BM . The said BM is a blood brother to the child's mother and therefore the child was born out of the incestuous relationship.
5. Upon the birth of the child, the parents approached Little Angels Adoption Society with the intention of offering the child for adoption and signed consent dated November 23, 2021 and February 25, 2022 in the High Court of Kisumu.



6. The child was then accommodated by the Springs of Life Children Home for care and protection pending adoption. She was formally committed to CCI by Kakamega Children's Court through protection and care case number E00xx/2022.
7. ABM was appointed as the Guardian ad litem, she confirmed to the court that she had visited the applicant's home severally. She observed that child was well and that the applicant bonded well with the child. She presented her report dated May 16, 2023 in which she recommends that the Applicant be allowed to adopt the child.
8. An officer from the Department of Children Services, Winfred Ikinya prepared a report dated April 14, 2023. The report established that the child was born on October 17, 2021. She was born to MK and BM . The said BM is a blood brother to the child's mother and therefore the child was born out of the incestuous relationship.
9. Upon the birth of the child, the parents approached Little Angels Adoption Society with the intention of offering the child for adoption. The report was countersigned by MA. The Child was placed with the Applicant on March 8, 2022. The Report recommends that the Applicant be allowed to adopt the child.
10. The proposed Legal Guardians ABM and MWN attended court and confirmed They are willing to take up the role of legal guardians. They are the applicant's friends.
11. After carefully assessing the records herein, I am satisfied that the applicant has fulfilled all the legal requirements relating to the Child's adoption. Section 186 of the [Children Act, 2022](#) provides.

- (1) The Court may make an adoption order on application by—
 - (a) a sole applicant; or
 - (b) two spouses jointly.
- (2) The Court shall not make an adoption order in any case unless—
 - (a) the applicant has attained the age of twenty-five years, but is not above the age of sixty-five years; and
 - (b) the applicant, or both of the applicants in a joint application, is more than twenty-one years older than the child.
- (3) The restrictions in subsection (2) shall not apply in any case where a sole applicant or one of the joint applicants is the mother, father, or relative of the child."

12. The Applicant is 39 years.
13. Article 53 of the [Constitution of Kenya, 2010](#) provides the overarching principles which must apply whenever any decision concerning a child is to be considered. It states:

"A Child's Best interests are of paramount importance in every matter concerning the child"

14. This principle is restated Under Section 8 of the [Children Act, 2022](#) which provides

"Best interests of the child.



- (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;
 - (b) the best interests of the child shall include, but shall not be limited to the considerations set out in the First Schedule.”

Section 194 (1) (c) of the Act also requires that if the adoption order is made the order will be in the best interests of the child, having regard to the wishes of the child, depending on the child’s age and understanding, and to the ability of the applicant to maintain and educate the child;

15. In view of the foregoing, the court is of the considered view that it is in the child’s best interest to be adopted by the Applicants. Accordingly, I allow the prayers sought in the Originating Summons dated November 2, 2022 and order as follows:
- i. The Applicant ENA be allowed to adopt Baby RA
 - ii. The Child is to be known as ABA
 - iii. The Child be presumed to be a Kenyan citizen by birth.
 - iv. ABM and MWN are hereby appointed as legal guardians of Child
 - v. The Registrar is hereby directed to enter this adoption into the Register of Adopted Children.
 - vi. The Guardian Ad litem is discharged.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 22ND DAY OF JUNE, 2023.

P M NYAUNDI

HIGH COURT JUDGE

In the presence of

