



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re MTP (Minor) (Adoption Cause 147 of 2022)  
[2023] KEHC 22099 (KLR) (15 June 2023) (Judgment)**

Neutral citation: [2023] KEHC 22099 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**ADOPTION CAUSE 147 OF 2022**

**EKO OGOLA, J**

**JUNE 15, 2023**

**JUDGMENT**

1. The Originating Summons before me is dated August 16, 2022. The applicants pray for the following:
  - a. That the Applicants herein KM and HAM be and are hereby authorized to adopt MTP (Minor)
  - b. That NSM be appointed as a legal guardian of the minor herein in the event of death or incapacity of the Applicants rendering them unavailable or incapable of taking care of the child.
  - c. That the Register General be and is hereby ordered to make the appropriate entries in the Adopted Children's Register in respect of the minor MTP.
2. The Application is supported by the statement and affidavit of the applicants. The matter was canvassed by way of viva voce evidence in open court.
3. The applicants are a married couple. They celebrated their marriage on June 2, 2021. Annexed to the Summons is a Certified Copy of Marriage Serial No. 029885. The applicant HAM came into the marriage with three children, one of them, MTP who is the subject of this Application. HAM is a Kenyan citizen as evidenced by the copy of her passport. KM is a British National. The Applicants are gainfully employed. KM is a Security Consultant employed by Allander Security Limited while HAM is a businesswoman. They have annexed to the Summons KM's Bank Statements and HAM's Mpesa Statements. The financial statements are evidence that they are financially stable with sufficient income to provide for the minor.
4. The Applicants have also proven that they have no previous convictions. KM has annexed a copy of a Certificate of Basic Disclosure from the United Kingdom, while HAM has annexed a copy of her Clearance Certificate issued by the Directorate of Criminal Investigations.
5. On record are Reports from the guardian ad litem, the Department of Children's Service and from the Adoption Society. From the reports, it is stated that the whereabouts of the biological father is



unknown. The applicant HAM, was in a short-lived relationship with him that did not culminate into a marriage and once the minor was born, the biological father fled and has never exercised his parental responsibility to the minor. The applicant HAM has therefore, raised the minor singlehandedly.

6. Since the biological father abandoned the minor and has not played any role in the minor's life, I hereby waive the requirement for the fathers consent in line with section 187 (1)(a) of the *Children's Act*, 2022.
7. The minor was born on June 4, 2009. From the Reports on record, it is stated that the minor has interacted with applicant KM, she knows him as her mother's husband and therefore she fully consents to the adoption. The Adoption Agency, Change Trust Adoption Society, declared the minor free for adoption on February 11, 2022 under a Certificate of freeing serial number 00445. All the Reports on record were positive and did not have any reservation on the adoption.
8. In deciding upon matters involving children, the courts are obliged to give priority to the best interest of the said child. See section 8(1) of the *Children's Act*. Since this is a kinship adoption that is provided under Section 193 of the *Children's Act*, the minor will remain within the same family unit and will further retain contact with her biological mother and her relatives.
9. The upshot is that this adoption will serve the best interest of the minor and I accordingly allow the originating summons dated August 16, 2022 and make the following orders:-
  - a. That the Applicants KM and HAM are authorized to adopt the child known as MTP.
  - b. That the Registrar General is directed to make the relevant entry in the Adopted Children's Register.
  - c. That NSM be appointed as the legal guardian for the child.
  - d. The guardian ad litem is hereby discharged.

It is so ordered.

**DATED and DELIVERED at NAIROBI this 15<sup>th</sup> day of June 2023**

**E.K. OGOLA**

**JUDGE**

*In the presence of:*

Ms. Kemunto for the Applicants

Gisiele Muthoni Court Assistant

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