



REPUBLIC OF KENYA



**In re CM (Child) (Adoption Cause E017 of 2022)  
[2023] KEHC 18620 (KLR) (Family) (12 June 2023) (Judgment)**

Neutral citation: [2023] KEHC 18620 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
ADOPTION CAUSE E017 OF 2022  
MA ODERO, J  
JUNE 12, 2023  
IN THE MATTER OF CHILDREN’S ACT NO 8 OF 2001  
AND  
IN THE MATTER OF ADOPTION OF BABY CM(THE CHILD)**

**IN THE MATTER OF**

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

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

**JUDGMENT**

1. Before this court is the Originating Summons dated February 15, 2022 by which the Applicants DM and PM seeks the following orders:-
  1. That CNW of P.O. Box xxxx – 00300, Nairobi, in the Republic of Kenya be appointed Guardian ad litem.
  2. That the Director Children’s Department, Ministry of Labour, Social Security and Services investigate the Applicants’ fitness to adopt and file a report.
  3. That the Applicants be authorized to adopt baby CM to be known as NM .
  4. That the child be presumed a Kenyan citizen by birth.
  5. That child’s date of birth be September 5, 2018, and the place of birth be Nairobi South Hospital.
  6. That the Registrar General be directed to enter the adoption in the Adopted Children Register.



7. That the Director Immigration be authorized to issue the child with a Kenyan passport.
  8. That Alice Wangui Wambugu be appointed the legal guardian of the child event of the death or incapacity of the Applicants before the child is of age independent.
  9. That the court be pleased to make any further orders it deems necessary.”
2. The Application was supported by the Affidavit 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 2004. They have two biological children a boy and a girl aged Sixteen (16) years old and thirteen (13) years old. The couple now wish to adopt a child in order to expand their family and out of a desire to provide a needy child with a home.
  4. The Applicants aver that they understand the legal implications of an adoption order. They undertake to provide the subject child with 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 male child who was born on September 5, 2018 at the Nairobi South Hospital. A copy of the birth Notification Serial Number 603xxxx is annexed to the summons (Annexure DMG ‘1’). The child is now aged five (5) years old and is above the six (6) week age limit provided for in law.
8. Change Trust which is a registered adoption agency have annexed to their report a copy of their certificate serial Number 00xxxx dated October 9, 2019 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. The Applicants are both Kenyans citizens as proved by the annexed copies of their National Identity Cards (Annexure ‘DMG ‘8’).
10. The Applicants are a married couple. A copy of their Marriage Certificate Serial Number 32xxxx appears as (Annexure DMG ‘9’) to the summons. Their union has been blessed with two (2) children. Copies for the birth certificates for their two children are annexed to the summons (Annexure DMG ‘10’)
11. The Applicants now wish to adopt the subject child in order to expand their family. They are also motivated by the desire to provide a needy child with a home.
12. The Applicants are both in gainful employment. The 1<sup>st</sup> Applicant is currently serving as a Pastor at [particulars withheld] Church in Kikuyu. The couple also run an events business. Together they earn a monthly income of approximately Kshs 80,000 which is sufficient to enable them provide for the needs of the child.



13. The couple have annexed copies of Bank statements for an account held with the Co-operative Bank (Annexure DMG '11').
14. The Applicants are both Christians and intend to raise the child in the Christian in faith. They were both examined and the male applicant was found to be mentally and physically fit.
15. However the female applicant is not in full good health having suffered a medical incident in the year 2021 with the result that even when she appeared before the court she was unable to talk. I have seen the medical report dated May 14, 2022 written by a Doctor from the [particulars withheld] Hospital. The report indicates that the female applicant suffered a cerebral venous accident in 2021 which affected her overall health.
16. The question is whether this medical condition disqualifies the female applicant as an adoptive parent. It is a fact that any parent even a biological parent of a child can suffer a medical incident which may compromise their health. The medical report indicates that the female applicant is being managed by medication and therapy while she is at home.
17. I have perused the supplementary report dated May 17, 2023 filed by the Director Children's Services. The report indicated that the child has bonded with the entire family and that notwithstanding the medical challenges faced by the female applicant the child has thrived in the care of the Applicants. I find that the medical challenges faced by the female applicant do not disqualify her as an adoptive parent.
18. The Applicants have annexed copies of clearance Certificates issued to them by the Directorate of Criminal Investigations (Annexure DMG '14') proving that neither has a criminal record.
19. The Applicant state that their extended family are aware of and support their intention to adopt the subject child. The biological children of the Applicants have both written notes giving their consent to the adoption. (pages 43 and 44 of the summons).
20. The Applicants have appointed the female applicant's sister as the legal guardian for the child. The proposed legal Guardian AWW has signed a consent dated November 7, 2018 indicating her willingness to act as the legal guardian for the child.
21. All in all I am satisfied that the Applicants are suitable adoptive parents.
22. The subject child was born in Nairobi on September 5, 2018. The child's biological parents voluntarily gave up the child for adoption as they felt unable to keep and raise the child due to the circumstances of life.
23. Section 186(8)(a) 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]
24. The child's biological mother MWM signed an initial consent dated September 18, 2018 (Annexure DMG '2'). Thereafter both biological parents of the child signed a consent dated July 1, 2019



(Annexure DMG ‘4’). I am satisfied that the consent of the child’s parents has been sought and obtained as required by law.

25. Once the child’s parents volunteered him for adoption the Nairobi Children’s Court on September 15, 2019 committed the child to Hope House Babies Home for care and protection. On November 6, 2019 the child was released into the custody of the Applicants under a Foster Care Agreement.

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). In all actions concerning children, whether undertaken by public or  
(1) 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. This is a child who was given up for adoption. The child parents felt unable to provide for him. He faced an uncertain future living in children’s homes and other similar institutions. This adoption allows the child the opportunity to be raised in a stable and loving home environment.

28. The child has lived with the Applicants in their home since November 2019. He has undoubtedly bonded with them. This is the only family the child knows.

29. I was able to see the child online. He was a healthy cheerful boy who confidently answered all questions put to him by the court.

30. I have perused the reports prepared by the Adoption Agency, the Guardian Ad litem and the Director Children’s Services. All three reports were positive as all recommend the adoption.

31. Finally, I find that this adoption serves the best interests of the subject child. Accordingly I allow this application and make the following orders:-

- 1) The Applicants DM And PM are authorized to adopt the child known as CM .
- 2) Upon adoption the child will be known as NM .
- 3) The Registrar-General directed to make the relevant entry in the Adopted Children’s Register.
- 4) AWW is appointed as the legal Guardian for the child.

**DATED IN NAIROBI THIS 12<sup>TH</sup> DAY OF JUNE 2023.**

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

