



**In re Baby ICM (Child) (Adoption Cause 3 of 2021)
[2023] KEHC 18945 (KLR) (Family) (2 June 2023) (Judgment)**

Neutral citation: [2023] KEHC 18945 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE 3 OF 2021
MA ODERO, J
JUNE 2, 2023
IN THE MATTER OF CHILDREN’S ACT NO 8 OF 2001
AND
IN THE MATTER OF ADOPTION OF BABY ICM(THE CHILD)**

IN THE MATTER OF

DAW APPLICANT

JUDGMENT

1. Before this court is the Originating Summons dated September 16, 2019 by which the Applicant DAW seeks the following orders:-
 1. That MO of P O Box 141 Cheptais, Bungoma be appointed guardian *ad litem* in this case.
 2. That the Director of Children’s Service be directed to compile the requisite report on the Applicant’s fitness to adopt the infant, ICM , under the [Children Act](#), 2001.
 3. That the Applicant be authorized to adopt ICM an infant to be known as ICM .
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 Applicant is a single mother of a thirteen (13) year old son. She has never been married. The Applicant now seeks to adopt the subject child who is her niece being the daughter of the Applicant’s older sister.
4. The Applicant confirmed that she understands the legal implications of an adoption order. She undertakes to accord the subject child all the rights due to the biological child including the right to inheritance.



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 girl child who was born on October 11, 2010. She is now aged twelve and a half (12 ½) years old and is well above the Six (6) week age limit provided for in law. A copy of her Birth certificate serial Number 23xxxx is annexed to the summons (Annexure ‘DAW-1’).
8. Change Trust which is a registered adoption society have annexed to their Report a copy of their certificate Serial Number 00xxxx dated September 20, 2019 declaring the child Free For Adoption. I am satisfied that the legal prerequisites for an adoption order have been met.
9. The duty of this court is to analyze the evidence on record to determine whether the Applicant is a suitable adoptive parent. The Applicant is a Kenyan citizen as evidenced by the annexed copy of her National Identity Card. (Annexure ‘DAW-2’)
10. The Applicant is a single woman who has never been married. She has one child a son who is aged fourteen (14) years old. The Applicant now wants to adopt her elder sister’s child.
11. The Applicant told the court that the child’s mother is unemployed and is not able to meet the needs of the child. She states that she has been paying the school fees for the child.
12. The Applicant works at the [particulars withheld] in the USA as a Security Officer. Annexed to the summons is a copy of the Applicants letter of Appointment (Annexure ‘DAW-3’) as well as copies of her payslips (Annexure ‘DAW-6’)
13. I am satisfied that the Applicant is financially secure and is in a position to meet the needs of the child.
14. The Applicant is a Christian and intends to raise the child in the Christian faith. She was examined by a doctor and found to be mentally and physically fit.
15. The Applicant has annexed a copy of the certificate of Clearance issued to her by the Directorate of Criminal Investigations as proof that she has no criminal record (Annexure ‘DAW-10’)
16. The Applicant told the court that her extended family are aware of and support her intention to adopt the subject child. She has appointed a relative as the legal Guardian for the child. The proposed legal Guardian MO has signed an Affidavit of consent dated July 23, 2022 confirming his wiliness to act as the child’s legal Guardian.
17. Section 186(8)(a)(c) 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]

18. The child’s biological mother JW testified in court. She stated that she is a dealer in used clothes and states that her business was adversely affected by the COVID-19 Pandemic. That as a result she is unable to meet the needs of the child. The mother states that the Applicant has been assisting her in providing for the child by paying the child’s school fees.
19. The child’s mother told the court that she consents to the adoption of her daughter by the Applicant. She has sworn an Affidavit of consent dated July 23, 2022.
20. The child’s biological father was never married to the child’s mother. The mother informed the court that the child’s father has played no role in her life and that she has raised the child from her birth single handedly.
21. The child’s biological father JMK has signed an Affidavit dated July 23, 2022 giving his consent to the adoption of the child by the Applicant. I am satisfied that the consent of both biological parents has been sought and obtained as required by law.
22. All in all I am satisfied that the Applicant is a suitable adoptive parent
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). 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)
24. I was able to see the child online. She was a healthy young girl who cheerfully and confidently answered all the questions put to her by the court. The child confirmed that she knows the Applicant well as her Aunt. The child stated that she gives her consent to her adoption by the Applicant.
25. Section 186(8)(c) of the [Children Act 2022](#) requires that the written consent of the child must be obtained. The child has penned a letter dated August 13, 2019 giving her consent to the adoption. I am satisfied that the child’s consent has been sought and obtained as required by the law.
26. Additionally the child’s elder brother MCKW has signed an Affidavit of consent dated July 23, 2022 consenting to the adoption of his sister.
27. The subject child is the niece of the Applicant. This is a kinship adoption which is provided for by Section 193 of the [Children Act, 2022](#). The child will remain within the same family unit and will have regular contact with her blood relatives.
28. 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 and recommend the adoption.
29. In conclusion I am satisfied that this adoption serves the best interests of the child. I therefore allow the application and make the following orders:-

1 The Applicant DAW is authorized to adopt the child known as ICM .



- 2 Upon adoption the child will be known as ICM .
- 3 The Registrar-General is directed to make the relevant entry in the Adopted Children's Register.
- 4 MO is appointed as the legal Guardian for the child.

DATED IN NAIROBI THIS 2ND DAY OF JUNE 2023.

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MAUREEN A. ODERO

JUDGE

