



**In re Baby GMN (Child) (Adoption Cause E150 of 2022)
[2023] KEHC 21538 (KLR) (Family) (21 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 21538 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E150 OF 2022
MA ODERO, J
JULY 21, 2023
IN THE MATTER OF CHILDREN'S ACT NO 8 OF 2001
AND
IN THE MATTER OF ADOPTION OF BABY GMN (THE CHILD)**

IN THE MATTER OF

JKK 1ST APPLICANT

CNK 2ND APPLICANT

JUDGMENT

1. Before this court is Originating Summons dated August 24, 2022 by which the Applicants JKK and CNK seek the following orders: -

- “1. Spent.
2. Spent
3. That the Applicants be authorized to adopt baby GMN to be known as GMK.
3. That the child be presumed a Kenyan Citizen by birth.
4. That the child's date of birth be January 26, 2012 and the place of birth be Nakuru.
5. That the Registrar General be directed to enter the adoption in the Adopted Children's Register.
6. That the Director Immigration be authorized to issue the child with a Kenyan passport.



7. That SNK and KKK be appointed the legal guardians of the child in the event of the death or incapacity of the Applicants before the child is of age or independent”
2. The application was supported by the statement of even date sworn by the Applicants. The matter was canvassed by way of viva voce evidence on the virtual platform.
3. The Applicants are a couple who got married to each other in January 2013. Their union has been blessed with three (3) biological children – sons who are now aged 29,28 and 21 years old. They now wish to adopt the subject child in order to expand their family.
4. The Applicants both understand the legal implications of an adoption order. They undertake to accord to the Subject Child all rights due to a biological child including the right to inherit.

Analysis and Determination

5. I have carefully considered this application for adoption, the evidence adduced in support thereof as well as the various reports filed in court. The prerequisites which must be met before an adoption order can be made are set out in Section 184 (1) (a) and (b) of the [Children's Act 2022](#) as follows: -
 - “(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.”
6. The Subject Child was born on January 26, 2012. Her Birth Certificate serial Number 206xxxx is annexed to the summons (Annexure ‘JCK 1’). She is therefore now aged eleven (11) years old and is above the six (6) weeks age limit provided for in the law.
7. Change Trust Adoption Agency which is a registered adoption agency have annexed to their report a copy of their Certificate Serial Number 004xx dated March 18, 2022 declaring the child Free for Adoption. I am satisfied that the legal prerequisites for an adoption order have been met.
8. The duty of the court is to analyze the evidence on record to determine whether the Applicants are suitable adoptive parents. The Applicants are both Kenyan citizens who reside and work in Seattle, USA as evidenced by the annexed copies of their passports (Annexure ‘JCK-5A’).
9. The Applicants are a married couple. Their marriage was solemnized on January 30, 2013 at the PCEA Muririchua in Naivasha. Annexed to the summons is a copy of their Marriage Certificate Serial No. 780xxx(Annexure A).
10. Their marriage was blessed by three (3) children who are now all adults. The Applicants wish to adopt the subject child who is the niece of the 1st Applicant in order to expand their family and arising from their desire to provide a needy child with a home.
11. The Applicants are both in gainful employment. The 1st Applicant runs a Restaurant in Seattle, USA whilst the 2nd Applicant works as Nurse Assistant. Together the Applicants realise a monthly income of approximately USD 15,000 which is sufficient to provide for the needs of the child. The Applicants have annexed copies of their Bank statements.



12. The Applicants were both examined by a Doctor and were found to be both mentally and physically fit. They have annexed copies of background checks dated February 14, 2023 in respect of the 1st Applicant and dated February 1, 2023 in respect of the 2nd Applicant conducted by the US Department of Justice, Federal Bureau of Investigation indicating that neither has a criminal record.
13. The Applicants told the court that their extended families are aware of and support their intention to adopt the subject child. The Applicants son KK testified before the court and confirmed that he was aware of and supported his parents intention to adopt the child.
14. The Applicants have appointed their two (2) sons as the legal guardians for the child. The proposed legal guardian is SNK and KKK have both signed a letter of consent dated October 1, 2022 (Annexure 'JCK - 9') indicating their willingness to act as the legal Guardians for the child.
15. All in all I am satisfied that the Applicants are suitable adoptive parents.
16. The subject child is an eleven (11) years old girl child. The biological parents of this child separated eight (8) years ago and the child was being raised by her paternal grandmother who died in the year 2021.
17. The child parents do not have the financial capacity to provide for the needs of the child. The Applicants have been providing for her needs. They have decided to step in and adopt the child in order to secure her future.
18. 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]
19. Both biological parents of the child testified in court. The mother MN indicated that she is a peasant farmer in Loitokitok. The mother indicates that she receives no help from the child's father and is unable to provide for the needs of the child.
20. The child's biological father AN also testified in this matter. He confirmed that the 2nd Applicant is his sister. The father stated that he has no means to care for the child. He too gave his consent to this adoption.
21. Both parents confirmed that they understand the legal implications of an adoption order. They each signed an Affidavit of consent dated August 18, 2022. I am satisfied that the consent of both parents has been sought and obtained as required by Section 186 (8) (a) of the [Children Act 2022](#).



22. 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)

23. This is a child whose parents are separated and have been unable to provide for all her needs. The Applicants who are relatives have stepped into adopt the child in order to provide her with a stable home environment.

24. Section 186(8)(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]

25. I was able to interview the child online. She confirmed that she knew the Applicants as her Aunt and Uncle. The child indicated her willingness to be adopted by the Applicants and gave her consent. The child also wrote a letter (Exhibit ‘A’) confirming her consent to the adoption. I am satisfied that the written consent of the child was obtained as is required by law.

26. 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 contacts with her blood relatives.

27. I have carefully perused the reports prepared by the Adoption Agency, Ad Litem and the Director Children’s Services. All three reports were favorable and all recommend the adoption.

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

- 1) The Applicants JKK and CNK are authorized to adopt the child known as GMN .
- 2) Upon adoption the child will be known as GMK .
- 3) The child is a citizen of Kenya by birth. Her date of birth is January 26, 2012 and place of birth is Nakuru.
- 4) The Registrar-General is directed to make the relevant entry in the Adopted Children’s Register.



5) SNK and KKK are appointed as the legal Guardians of the child.

DATED IN NAIROBI THIS 21ST DAY OF JULY, 2023.

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MAUREEN A. ODERO

JUDGE

