



**In re ZMK (Child) (Adoption Cause E144 of 2022)
[2023] KEHC 21059 (KLR) (Family) (21 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 21059 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E144 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 ZMK (THE CHILD)**

IN THE MATTER OF

HOW 1ST APPLICANT

VRAOW 2ND APPLICANT

JUDGMENT

1. Before this court is originating summons dated August 22, 2022 by which the applicants HOW and VVRAOWE seek the following orders: -

“1. That the applicants be authorized to adopt Baby ZMK to be known as ZWKW.

2. That LAW and SDW be appointed as the legal guardians of the child in the event of the death or incapacity of the applicants before she is of full age and fully self-reliant.

3. That the Registrar General be directed to enter in the Adopted Children Register an entry recording the adoption.

4. That the child be presumed to be a Kenyan citizen by birth.

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 to each other in August 1992. Their union has been blessed with two (2) biological children – a son who is now aged 30 years old and a daughter who is now aged 28 years old. They now wish to adopt the subject child in order to offer better care and give the minor a sense of belonging.
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 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 February 10, 2020. A copy of her birth certificate serial number 4xxxx1 is annexed to the summons (annexture ‘HV-1’) She is therefore now aged three (3) years old and is above the six (6) weeks age limit provided for in the law.
7. Kenya Children’s Home Adoption Society which is a registered adoption agency have annexed to their report a copy of their certificate serial number xxxx dated August 18, 2021 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 as evidenced by the annexed copies of their National Identity Cards (annexture ‘HV ‘5’).
9. The applicants are a married couple. They solemnized their marriage on August 1, 1992 at the Buruburu Church of God in Nairobi. Annexed to the summons is a copy of their marriage certificate serial No GxK 1xx5 (annexture HV ‘5’).
10. The applicants marriage was blessed with two children, a son who is now aged thirty (30) years old and a daughter who is now aged twenty-eight (28) years old. The couple wish to adopt another child who is the great grand-daughter of the 2nd applicant in order to provide better care for the child and give her sense of belonging.
11. The applicants are both in gainful employment. The 1st applicant works as an Academic Registrar at the University of Nairobi whilst the 2nd applicant is a Branch Manager employed by The National Social Security Fund. The applicants have annexed copies of their pay slips. (annexture ‘HV ‘6’) as proof of their earnings. I am satisfied that the applicants are financially stable and have the capacity to provide for the needs of the child.
12. The applicants are both committed Christians who worship at Winners Chapel. The 1st applicant is a board member and elder at the church whilst the 2nd applicant is a deaconess with the same church. They intend to raise the child in the christian faith.



13. The applicants were both examined by a doctor and were found to be physically and mentally fit. They have each annexed copies of clearance certificates issued to them by the Directorate of Criminal Investigations (annexture ‘HV ‘9’) proving that neither has a criminal record.
14. The applicants eldest son SDW testified in this matter. He told the court that he was aware of and fully supports his parents’ intention to adopt the subject child. The said son and their daughter LAW have both written a letter of consent to the adoption dated March 29, 2021. (annexture HV ‘10’).
15. The applicants have appointed their children as the legal guardians for the child. The proposed legal guardians SDW and LAW have both signed a letter of consent dated March 29, 2021 indicating their willingness to be appointed as legal guardian for the child.
16. The applicants are not new to parenting as they already have two adult children of their own. All in all, I am satisfied that the applicants are suitable adoptive parents.
17. The subject child was born at Mbagathi District Hospital in Nairobi to SNA on February 10, 2020. The birth certificate is attached to the summons. (annexture HV ‘1’)
18. The subject child is the great grand-child of the applicants. She is the child of the 2nd applicants sister’s grand-child. The child born to the mother as the result of a casual relationship with a man whose identity remains unknown. The child’s mother who was aged eighteen (18) years at the time felt incapable of caring for the child and toyed with the idea of abandoning her baby.
19. The 2nd applicant being a family member stepped in to counsel the young mother. The applicants then offered to take the baby when she was born and have continued to raise the child since then.
20. 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]
21. The child’s biological mother SNA testified before the court. She stated that she bore the child when she was only eighteen (18) years old. That she is currently unemployed and lives with her mother in Kisumu Town. The mother stated that she has no means to provide for her child. She gave her consent to the adoption and confirmed that she fully understood the legal implications of an adoption order.
22. The biological mother of the subject child gave her consent and relinquished all her parental rights. To this effect is a statutory declaration dated August 4, 2021 (annexture ‘HV-2’) and a letter dated January 21, 2021. In the circumstances, I am satisfied that the requirement for consent in line with section 186(8) [Children Act](#) 2022 has been complied with.



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). (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]

24. This is a child whose biological mother was unable to care and provide for her. The applicants took in the child when she was born and have cared for her since her birth.

25. The child has lived with the applicants in their home since she was born. She has undoubtedly bonded with the applicants and their children. I was able to see the child online. She was a healthy talkative toddler who was obviously comfortable in her surroundings. This adoption allows the child the opportunity to be raised in a loving and stable home environment.

26. A home visit was conducted by the Children’s Officer. The applicants reside in a four bedroomed house in South C within Nairobi. The home is in a secure compound with adequate space and facilities for the child.

27. This is a kinship adoption which is provided for by section 193 of the Children Act. 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 Services. All three reports were positive and recommend the adoption.

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

1. The applicants HOW and VRAOW are authorized to adopt the child known as Baby ZMK.
2. Upon adoption, the child shall be known as ZWKW
3. The Adopted Children's Register.

Registrar
 4. LAW and SDW are appointed as the
 General
 legal guardians for the child.

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

.....relevant.....

MAUREEN A. ODERO
the
JUDGE