



**In re D (Child) (Adoption Cause E002 of 2021)
[2023] KEHC 19867 (KLR) (7 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 19867 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
ADOPTION CAUSE E002 OF 2021**

A MSHILA, J

JULY 7, 2023

IN THE MATTER OF THE CHILDREN'S ACT

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION ORDER OF BABY D (A CHILD)

IN THE MATTER OF

AMK 1ST APPLICANT

WWW 2ND APPLICANT

JUDGMENT

1. The application is brought by way of an originating summons dated the 26th day of January, 2021 and amended originating summons dated 31st day of August, 2022; and is premised under the provisions of sections 154, 156, 157, 158, 159(1) 159, 163 & 170 and all other enabling provisions of the *Children's Act*. The applicants seek the following Orders;
 - a. That JWK be appointed as Guardian Ad Litem of BabyD;
 - b. That the applicants AMK and WWW be authorized to legally adopt BABY D who will be known as MKM;
 - c. That BabyD be presumed to be a Kenyan citizen;
 - d. PW And JNK be appointed as next of kin and legal guardians to BabyD;
 - e. The Registrar General do make the appropriate entry of MKM in the Adopted Children's Register.
 - f. The consent of the biological parents be dispensed with.
 - g. The court make further orders as it deems fit in the interest of justice.



2. The application was supported by a joint statement and affidavit made by the applicants; The Guardian Ad Litem JWK was appointed on the January 26, 2023; This court directed the Children's Services Officer and the Guardian Ad Litem to carry out home visits and do investigations and to file their Reports.
3. After visiting and interrogating the applicants the Nairobi County Department of Children's Services and the Guardian Ad Litem filed their respective Reports on the Applicants suitability to adopt baby D; the reports were duly filed in court and are dated June 26, 2021 and February 7, 2023; both reports are found to be highly favourable to the applicants and recommend their suitability as adoptive parents.
4. The baby who is male was born on the October 11, 2017 and was born to CW at [Particulars Withheld] Medical Centre in Githurai; immediately upon birth the mother and grandmother offered him 'Mother Offer' up for adoption and approached KKPI Adoption Society. The baby was admitted to Happy Life Children Home, for temporary shelter, care and protection whilst awaiting adoption; under the Protection and Care Case No. 40 of 2018 the Children's Court sitting at Nairobi formally committed baby D vide Order issued on January 16, 2018 to the aforesaid institution for protection and care.
5. The biological mother and grandmother had appended their signatures on an undated handwritten letter addressed to KPI Adoption Society and later signed a consent in the form of a Certificate of acknowledgement from KKPI which was dated October 13, 2017; the last consent is in the form of an affidavit dated January 23, 2018 and is sworn by the grandmother as the biological mother was a found to be a minor and therefore lacked capacity to give consent.
6. On the June 13, 2018 Baby D was declared free for adoption under section 156(1) of the *Children's Act* and a Certificate Serial Number 642 was issued by the KKPI Adoption Society.
7. After reading and taking into consideration the contents of these Reports, this court is satisfied that all the legal requirements have been adhered to notably; the Applicants are Kenyan citizens and they solemnized their marriage on 3rd January, 2009 as evidenced by the copy of the attached Certificate of Marriage Serial No. xxxx; at the time of filing this application the prospective adoptive father AMK was aged 44 years whereas WWW was aged 42 years and therefore both their ages fall within the prescribed legal parameters; The applicants have one child named RW aged nine (9) years; The prospective father is self-employed and carries on business whereas the prospective mother is gainfully employed as an Accountant with the [particulars Withheld]; Both have produced into court copies of Title documents and Bank Statements to prove their financial capability to support Baby D when they assume responsibility of his upbringing.
8. The Certificates of Good Conduct are current and valid and this court is satisfied that there are no adverse circumstances discernible from the families of the applicants or any individual characteristics or lifestyle that would be detrimental to the baby;
9. The court was urged to dispense with the consent due to the fact that the mother and grandmother had expressed their desire to get money from the process; On the July 28, 2022 this court ordered for an investigation to be carried out and a report be filed in court;
10. The mother and the grandmother were contacted by the Nairobi County Department of Children Services for an interview to set the record straight and a report was duly filed; It was reported that both the biological mother and the grandmother were driven by the desire to get money from the adoption process which is against the law; secondly, it was reported that the mother and grandmother on the appointed date set for the interview they both neglected/ failed and or refused to attend despite having promised to turn up. Thirdly, neither of them have ever approached the court to seek orders for the



return of Baby D to their custody; that their conduct is a clear indication that both do not have the best interest of the child at heart; this court is satisfied that there are good reasons for it to dispense with the consent of the mother and grandmother.

11. For the reasons stated above this court is satisfied that the applicants have fulfilled all the pre-requisites for adoption orders and are found to be suitable persons to adopt Baby D and is further satisfied that the order for adoption will be in the best interest of the baby.

Findings & Determination

12. For the forgoing reasons this court finds that the application for adoption has merit and it is hereby allowed;
13. The applicants are hereby authorized to adopt baby D; he shall be known as MKM.
14. That Baby MKM be presumed to be a Kenyan citizen;
15. The Registrar General is hereby directed to enter this adoption order of MKM in the Adopted Children's Register; the Registrar Births and Deaths is hereby directed to issue a Certificate of Birth in the name MKM.
 - h. The Guardian Ad Litem JWK is hereby discharged and PW and JNK be appointed as next of kin and legal guardians to Baby MKM until the minor attains the age of majority of eighteen (18) years.

Orders Accordingly.

DATED, SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 7TH DAY OF JULY, 2023.

HON. A. MSHILA

JUDGE

In the presence of;

Mourice – Court Assistant

Miss Mbuvi – for Applicants

