



**In re Baby HMO (Adoption Cause E021 of 2023)
[2023] KEHC 24827 (KLR) (Family) (6 October 2023) (Judgment)**

Neutral citation: [2023] KEHC 24827 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY**

ADOPTION CAUSE E021 OF 2023

PM NYAUNDI, J

OCTOBER 6, 2023

IN THE MATTER OF

EWM 1ST APPLICANT

DMK 2ND APPLICANT

JUDGMENT

1. The Applicants, EWM and DMK vide Originating Summons dated 14th February 2023 have made an application for the adoption of Baby HMO the child herein. The applicants got married on 4th April 2009 through a church wedding held at PCEA [particulars withheld] Church and have attached a copy of marriage certificate serial number XXXX. They do not have a child of their own and, upon completion, this process will make it possible for them to have one.
2. The matter proceeded for hearing via *viva voce* evidence on the Teams virtual platform on the 28th of September 2023.
3. The Applicants are Kenyan Citizens and of the Christian faith. They aver that they have the financial means and capability to take care of the Child. The 1st applicant works as a nurse at Kenyatta National Hospital, the second applicant works as driver at [particulars withheld] They have had custody of the child since 2019. They reside at Juja. They fully understand the consequences of an adoption order.
4. The child is a male child who was born on 25th May 2018 to Medrin Wanjiku Maingi of Identification Number 3XXXXXX at The Mbagathi Hospital. His birth Notification Serial No 47XXXXX. On 9th May 2018, the mother of the child and the maternal grandmother of the child Ms MWM of Identification Number 42XXXXX approached KKPI Adoption Society with intention of offering the child up for adoption.
5. The social worker from the Adoption Society took them through the explanatory Memorandum for offering the child for adoption. The biological mother of the child understood the Memorandum, and



this was confirmed by her signing the certificate of acknowledgment on 9th May 2018. In person and formally via letter to the Society, the biological mother of the child stated that she was offering up her child for adoption because she already has another child, and she is not financially stable and also that the father of the child is unwilling to support her in raising the second child.

6. On 29th May 2018 the child was admitted to House of Charity Children's Home. On 14th August 2018, Sub County Children Officer from Westlands, Mr Comfort Karimi, wrote a letter to court requesting the court to commit the child to House of Charity Children's Home. On 21st August 2018, the biological mother signed the final consent. On 22nd August 2018, the child was committed to House of Charity Children's Home for the care and protection at the Nairobi Children's Court vide Protection and Care Case No 463 of 2018.
7. Prior to the hearing of the adoption application, KKPI Adoption Society prepared and filed a report and issued a certificate declaring the child free for adoption. On 23rd March 2023, the Court appointed a Guardian Ad litem Catherine Nganga.
8. The Guardian Ad Litem, Catherine Nganga was present in Court and presented her report dated 10th May 2023. She confirmed that she visited the Applicants and the Child at their home and observed that they have bonded well, and the child is well taken care of. She recommends that the Applicants be allowed to adopt the Baby.
9. An officer of the Department of Children Services, Ezekiel Kimani prepared a report dated 7th June 2023, and counter signed by Mary Atati. The report established that the child is a minor born on 25th May 2018. He was born to MWM who then approached KKPI Adoption Society with the intention of offering him for adoption. She was then processed by the said adoption society and the child was placed at House of Charity Children Home pending formal committal by the Children Court. The subject minor was formally committed to that CCI by Nairobi Children Court through protection and Care case number XXX of 2018. In 2019, the child was placed under the foster care of the applicants pending adoption.
10. The minor HJK wa M was present in Court. He is 5 years Old. He confirmed that he goes to school. He recognises the Applicants as his parents. The Court observed that he appeared at ease with the 1st Applicant with whom he was in the house.
11. The proposed Legal Guardians RKM and JNK attended court and confirmed they are willing to take up the role of legal guardian. Julietta works with 1st applicant at Kenyatta Hospital.
12. After carefully assessing the records herein, I am satisfied that the applicant has fulfilled all the legal requirements relating to the Child's adoption. Section 186 of the [Children Act](#), 2022 provides.

- 1 The Court may make an adoption order on application by—
 - a. A sole applicant; or
 - b. Two spouse jointly
- (2) The Court shall not make an adoption order in any case unless—
 - (a) the applicant has attained the age of twenty-five years, but is not above the age of sixty-five years; and
 - (b) The applicant, or both of the applicants in a joint application, is more than twenty-one years older than the child.



- (3) The restrictions in subsection (2) shall not apply in any case where a sole applicant or one of the joint applicants is the mother, father, or relative of the child.

13. The Applicants are aged 41 years and 40 years respectively.
14. Article 53 of the Constitution of Kenya, 2010 provides the overarching principles which must apply whenever any decision concerning a child is to be considered. It states:

A Child's Best interests are of paramount importance in every matter concerning the child

15. This principle is restated Under Section 8 of the Children Act, 2022 which provides

Best interests of the child.

- (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;
- (b) The best interests of the child shall include, but shall not be limited to the considerations set out in the First Schedule.

Section 194 (1) (c) of the Act also requires that if the adoption order is made the order will be in the best interests of the child, having regard to the wishes of the child, depending on the child's age and understanding, and to the ability of the applicant to maintain and educate the child;

16. In view of the foregoing, the court is of the considered view that it is in the child's best interest to be adopted by the Applicants. Accordingly, I allow the prayers sought in the Originating Summons dated 14th February 2023 and order as follows:

- i. The Applicants EWM and DMK be allowed to adopt HMO.
- ii. The Child to be known as HMK.
- iii. The Child be presumed to be a Kenyan citizen by birth and date of birth is 25th May 2018 at Mbagathi Hospital
- iv. RKM and JNK are hereby appointed as legal guardians of Child
- v. The Registrar be and is hereby directed to enter this adoption into the Register of Adopted Children.
- vi. The Director Immigration is authorized to issue the child with a Kenyan passport
- vii. The Guardian Ad litem is discharged.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 6TH DAY OF OCTOBER 2023.

P M NYAUNDI

HIGH COURT JUDGE

In the presence of;

Sylvia Court Assistant

