



REPUBLIC OF KENYA



KENYA LAW
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**In re MW(Child) (Adoption Cause E003 of 2021)
[2022] KEHC 3203 (KLR) (10 February 2022) (Judgment)**

Neutral citation: [2022] KEHC 3203 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAJIADO
ADOPTION CAUSE E003 OF 2021
SN MUTUKU, J
FEBRUARY 10, 2022**

IN THE MATTER OF CHILDRENS ACT CAP 586 LAWS OF KENYA SECTION 154 (1), (2)

BETWEEN

JMM 1ST APPLICANT

RWM 2ND APPLICANT

AND

CHILD WELFARE SOCIETY OF KENYA RESPONDENT

JUDGMENT

1. JMM and RWM, the Applicants, seek to adopt Baby MWM and rename him as such.
2. They filed an Originating Summons (OS) dated July 26, 2021 seeking four (4) prayers:
 - (a) That JMM and RWM herein be authorized to adopt the child baby MWM.
 - (b) That upon the making of the adoption orders the said child be known as MWM.
 - (c) That the Registrar General does make the appropriate entry of MWM in the Adopted Children's Register.
 - (d) That the child MWM be presumed to be a Kenyan citizen born in Kenya
3. They have filed an affidavit in support of the OS in which they deposed that they are Kenyan citizens of identity card numbers xxxxx and xxxxxx respectively; that they were married in the year 2003 at the PCEA Ongata Rongai Church, have lived together as husband and wife and that they have no children of their own.
4. They deposed that they approached the Child Welfare Society of Kenya (the Society) for assistance to adopt a baby; that a child was identified and an agreement made with the Society accepting the child.



5. That the child was freed for adoption.
6. They state that they are law abiding and are more than 21 years older than the child, financially stable and able to take care of the child; that their family has accepted the adoption and that they shall comply with the law governing adoptions.
7. They filed an affidavit of means showing that they have financial means to take care of the child and undertaking to include the child in all their financial benefits.
8. They have attached all relevant documents in support of their application, including their national identity cards, marriage certificate, bank statements, medical particulars showing they are medically fit, police clearance certificates and Declaratory Report dated 9th June 2021 prepared by Kenya Children's Homes the Adoption Society.
9. The Report in paragraph 8 above shows that the Applicants satisfied all the requirements for placement with the child with a view to eventually adopting the child.
10. The Applicants are in gainful employment. JMM works as a Senior Pastor at the [Particulars Withheld] while RWM is a Primary School Teacher at the [Particulars Withheld] Primary School.
11. The child was previously known as FK. He was born on 29th August 2018. He was abandoned on the same day of his birth near [Particulars Withheld] Nairobi. The matter was reported at Muthangari Police Station under OB No. 9/29/8/2018. The minor was admitted at the New Life Home Trust Children Home. The child was committed to the said Home on 15th January 2020 in Protection and Care Case No. 2 of 2020.
12. This court received evidence from the applicants on the 1st of February 2022.
13. This court appointed NWN as Guardian Ad Litem of Baby MWM. Nancy filed a report dated 11th November 2021. I have read the report. It makes favourable recommendations in regard to the Applicant and the adoption of Babu MWM.
14. The Children's Department Sub-County Officer, Kajiado North Sub-County also prepared a detailed report dated 19th January 2022. It also speaks well of the Applicants and makes favourable recommendations.
15. I have considered this matter. All the documentation required in the adoption process and all the procedures have been followed to the legal requirements. However, I note that the Applicants in their OS did not include a prayer to have NWN appointed as a Guardian of Baby MWM as required under Section 164 of the Children's Act. However N has sworn an Affidavit dated July 26, 2021 consenting to be so appointed,
16. This is a technicality that this court can cure by dint of Article 159 (2) (d) of *the Constitution* by application of substantive justice. Besides, the power of the court to appoint a guardian under Section 164 of the *Children Act* can be exercised upon an application by a party or on its own motion.
17. I am satisfied with the material placed before me in regard to these proceedings and I find all the reports in favour of the Applicants adopting Baby MWM. This court shall not stand in the way of this child's future which by any standards looks bright. I allow the OS and grant the following orders:
 - a. That I authorize JMM and RWM to adopt Baby MWM who shall retain that name.
 - b. That I direct the Registrar General to make the appropriate entry of MWM in the Adopted Children's Register.



- c. That the Baby MWM shall be presumed to be a Kenyan citizen by birth.
- d. That NWK is hereby appointed Guardian of Baby MWM.
- e. That NWN is hereby discharged from her role as a Guardian Ad Litem of Baby MWM.

Orders shall issue accordingly.

DATED, SIGNED AND DELIVERED THIS 10TH FEBRUARY 2022.

S. N. MUTUKU

JUDGE

