



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**FAMILY DIVISION**  
**ADOPTION CAUSE NO. E078 OF 2020**  
**IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001 AND THE ADOPTION RULES**  
**AND**  
**IN THE MATTER OF BABY FM**  
**AND**  
**IN THE MATTER OF AN APPLICATION FOR ADOPTION**  
**BY**  
**BMM ..... APPLICANT**  
**JUDGMENT**

1. Before this Court is the Originating Summons dated 27<sup>th</sup> November 2020 by which the Applicant **BMM** seeks the following orders:-
1. **SPENT**
  2. **SPENT**
  3. **THAT the Applicant be authorized to legally adopt FM (herein referred to for all common interest and purposes as the child) and whose name shall remain unchanged.**
  4. **THAT HM be appointed as next of kin and legal guardian to the child herein.**
2. The Summons was supported by the Applicants statement of even date. The matter was disposed by way of viva voce evidence on the online platform.
3. **PW1** was the Applicant **BMM** told the Court that she is a single mother of two adult children. She stated that she is a teacher by profession currently residing in **Tawa, Makueni County**.
4. The Applicant stated that she wishes to adopt the child **FM** who is her niece being the child of her younger brother. That she has lived with and provided for the child since the death of the child's biological mother in the year **2012**.
5. The Applicant confirms that she is a Christian and will raise the child in the Christian Faith. That her family and more specifically the biological father of the child are in support of her decision to adopt the child. Finally the Applicant assured the Court that she fully understood the legal implications of an adoption order. That she will accord to the child all the rights due to a biological child including the right to inherit.
6. **PW3 HK** was the biological father of the subject child. He confirmed that he has given his consent to the adoption. He further stated that he was fully aware that an order of adoption is permanent and cannot be reversed.

7. **PW4 JACKLINE WAMBUI** was the Officer from the Adoption Agency. She confirmed that the Agency had filed their report recommending the adoption.

8. **PW5 MS NYARANGA ODUNDO** represented the **Director Children's Services**. She confirmed that the Directorate had filed its report dated **29<sup>th</sup> March 2021** recommending the adoption.

#### ANALYSIS AND DETERMINATION

9. I have considered the evidence adduced in open Court as well as the various Affidavits and Reports filed in this matter. The Preliminary requirements for the making of an Adoption Order are set out in **Section 156(1)** of the **Children's Act** which provides as follows:-

**“159(1) No arrangement shall be commenced for the adoption of a child unless the child is at least six (6) weeks old and has been declared free for adoption by a Registered Adoption Society in accordance with the Rules prescribed in that behalf.”**

10. The subject child was born on **12<sup>th</sup> April 2009** as evidenced by the copy of her Birth Certificate Serial Number **XXXXXX** which was annexed to the Summons. Thus the child is now aged **twelve (12) years** old and is way older than the **six (6) week** age limit provided for in the Act. **KKPI a Registered Adoption Agency** have annexed the original copy of their Certificate dated **13<sup>th</sup> March 2021** Serial Number **XXX** declaring the child Free For Adoption. Accordingly I find that all the legal requirements for adoption have been met.

11. The Applicant who is a teacher by profession is a single mother who has never been married. The Applicant has two biological children aged **36 years** and **34 years** respectively. Both her children are adults living their own independent lives.

12. The Applicant is employed by the **Teachers Service Commission (TSC)** and is currently the Head Teacher at **St. [particulars withheld] Primary School** in **[particulars withheld] Machakos County**. The Applicant earns a monthly salary of approximately **Kshs. 97,000/-** which is more than sufficient to provide for the needs of the child. The Applicant has annexed to the Summons copies of her bank statements from the **Co-operative Bank**. She owns her own homestead on a **6 acre** piece of land in **Tawa, Makueni County** where she resides with the child and the child's biological father. I find that the Applicant is financially stable and has sufficient resources to provide for the child.

13. The Applicant is in good mental and physical health as per her Medical Report dated **17<sup>th</sup> November 2020** from **Masii Health Centre**. Her family members are in full support of her desire to adopt the child. The child's biological father has signed a consent to the Adoption. The said father testified in Court and stated that he is a widower as his wife (the child's mother) died in the year **2012**. He told the Court that he is currently ailing and requires palliative care thus he is not in a position to care for his child. The child's father told the Court that the Applicant who is his elder sister took the child into her care when the child's mother passed away in **2012** and has provided for all the needs of the child to date. The child's father told the Court that he is certain that the Applicant will provide the child with excellent care. All in all I am satisfied that the Applicant is a suitable adoptive parent for the child.

14. The subject child was born in **April 2009**. The child's biological mother unfortunately passed away in the year **2012**. From that time when the child was only **three (3) years old**, the Applicant took over her care and has since then lived with the child and provided for all the child's needs. As stated earlier the child's biological father has consented to the Adoption.

15. In deciding upon any matter involving a child Courts are obliged to give priority to the best interests of the said child. **Section 4(2)** of the **Children Act** provides:-

**“(2) In all actions concerning children, whether undertaken by public or private social welfare institutions, Courts of Law administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration.” [own emphasis]**

16. This is a child who lost her mother at a very early age. The child's father is ailing and is not able to provide for her. The only mother the child knows is the Applicant having lived with the Applicant from a very tender age. I have no doubt she has bonded with the Applicant. The Applicant has enrolled the child in school and caters for all her educational requirements.

17. A home visit conducted by the Children's Officer found that the Applicant lives with the child and the child's father in her **6 acre** piece of land in **Tawa**, where the Applicant has built a home. The Applicants two biological children are both adults who live independent lives. They have no objection to the adoption. Indeed the Applicants biological son **HM** has consented to act as the Legal Guardian for the child. This is a kinship adoption and the child will remain in familiar surroundings and continue to have interactions with her blood relatives.

18. I was able to interview the child online. She was a neat and healthy child who being **12 years** was able to express herself clearly. The child referred to the Applicant as her **“mother”** and told the Court that she would be happy to be adopted by the Applicant. **Section 76(3)(a)** of the **Children Act** which provides:-

**“(3) Where the Court is considering whether or not to make an order with regard to a child, it shall have particular regard to the following matters-**

**a. The ascertainable feelings and wishes of the child concerned with reference to the child's age and understanding.” [own emphasis]**

19. From the evidence available I am satisfied that this adoption will serve the best interests of the child. Accordingly I allow this Summons and make the following orders:-

**a. The Applicant BMM is authorized to adopt the child FM.**

**b. HM is hereby appointed as the Legal Guardian for the child.**

**c. The Registrar General is directed to make the relevant entry in the Adopted Children's Register.**

**DATED IN NAIROBI THIS 18<sup>TH</sup> DAY OF JUNE, 2021**

.....

**MAUREEN A. ODERO**

**JUDGE**