



REPUBLIC OF KENYA



**In re Baby RGW (The Child) (Adoption Cause E155 of 2023)
[2024] KEHC 5214 (KLR) (Family) (26 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 5214 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E155 OF 2023
PM NYAUNDI, J
APRIL 26, 2024**

JUDGMENT

1. Vide Originating Summons, dated 10th August, 2023 the Applicant herein seeks the following orders, that:-
 - i. She be authorized to adopt RGW
 - ii. The child to be known as RGW
 - iii. The Registrar General be directed to enter this adoption into the register of Adoptions.
 - iv. TWG be appointed as Legal Guardian of the child.
 - v. The child's biological father's consent for adoption be dispensed with.
 - vi. The child be presumed to have been born in Kenya.
2. The Applicant is a Kenyan Citizen by birth and currently resides in United States of American in Pennsylvania. The Applicant is a teacher by profession. The Applicant was previously married to the DAS unfortunately she had no children of her own with her husband who passed away in July, 2018. J who is the Applicant herein remarried and lives with her husband in Pennsylvania, United State and celebrated their marriage on 17th May, 2022. It is the Applicant's averment that her husband WGC given a written consent for the Applicant to adopt her niece the child herein.
3. It's the Applicants' further statement that their relationship and marriage had been blessed and the 2nd Applicant assumed parental responsibility over the child herein and his sibling.
4. Through the online platform in Court, the Applicant testified that the child herein is her niece as her mother ENG is younger sister to Applicant and stated that she has taken care of the child since she was born. She further reiterated that she supports the child for her needs hence kinship adoption provided under Section 193 of the [Children Act](#) 2022.



5. The Applicant averred that she has means to provide for the child and that she understands the legal implications of an adoption order which is not reversible.
6. ENG is the biological mother of the minor herein and she stated in online platform in Court that the Applicant is her elder sister. She also stated that the minor's father denied responsibility for the minor and whereabouts are unknown and she further understands that by consenting to the adoption she will be relinquishing her parental rights and that the order is irreversible.
7. RGW (the child herein) is the subject of the present adoption proceedings was born on 2nd October, 2012. The child was present in Court and averred that she is 11 years old, attends school in [particulars withheld] Academy where she is in year 6. The minor asserted that she is aware of her A becoming her adoptive mother and she consents to the Adoption proceedings.
8. This being a Kinship adoption, the Applicant made legally necessary applications to be allowed to adopt the child and meets the Kinship Adoption requirements. The minor's mother sworn an affidavit of consent expressing her willingness for the process of this adoption to continue and to have the child adopted by the Applicant.
9. Upon an assessment and approval by K.K.P.I Adoption Society, consent from the minor's mother, the consent from the minor, the minor was declared free for adoption by the same Adoption Society Vide a Certificate of Freeing dated 28th June, 2023 under Section 156 (1) of the *Children Act* 2022. And the Adoption Regulations.
10. On 30th November, 2023 this Court issued an order appointing CM as the child's guardian ad litem, and further directing the guardian ad litem and the Director of Children's Services to investigate and file their respective reports within 45 days.
11. Pursuant to Section 102 of the *Children Act* 2022, before this matter came up for hearing, Harriet Kihara Principal Children's Officer prepared and filed a report which was countersigned by Mary Atati Assistant Director of Children's Services on 26th February, 2024 in respect of the proposed adoption of the minor by Applicant. She observed that the minor has bonded well with the Applicant, the Applicant is socially and financially stable to take care of the child. She also noted that the Applicant has appointed TWG (Applicant's sister) as the legal guardian of the child herein. She further stated that this being a Kinship Adoption it will be in the best interest of the minor since the Applicant have met the legal requirements as provided by *Children Act* 2022. She further stated that the Applicant has proved capable of taking on parental responsibility over the child in this matter who has been under the Applicant continuous care and control. The child has strongly bonded with the adoptive Applicant, hence recommended for the best interest of the minor.
12. Another Report was filed by the guardian ad litem, CM in which she stated that the Applicants have created a strong bond with the child and it will be in the best interest of the minor therefore recommended the adoption of the minor.
13. It was evidence from the Court is that TWG (the Legal Guardian) sister to the Applicant consented to the Adoption order and stated that she lives in UK and she is prepared to assume parental responsibilities should circumstances require.
14. Additional, other Statutory Reports filed stated that the Applicant is financially and emotionally capable of providing the child with care, protection and education. She has no criminal record as evidenced by copy of Police Clearance Certificate Reference Number XXXX/2013 dated 19th March, 2013. This Court has evaluated the facts of this adoption. This is a Kinship adoption. It is evident that the Applicant has fulfilled all the legal requirements relative to the adoption of the child.



15. The home visits by the guardian ad litem and the Assistant Director of the Children's Services established that the Applicant has the financial and emotional capability to provide for the upkeep and education of the child.
16. The proposed Legal guardian TWG attended Court and confirmed she and the Applicant are sisters and therefore, consented to act as Legal Guardian.
17. This Court observed the Applicant with the minor in Court and it was evident that in the period that the Applicant has had the custody of the child, the child has bonded well with the her.
18. This is a Kinship Adoption. It is evident that the Applicant has fulfilled all the legal requirements relative to the adoption of the child. The consent of the biological father of the child was dispensed with since his whereabouts is unknown. This Court has satisfied itself that the Applicant is qualified and able to take care of the child.
19. After carefully assessing the records herein, I am satisfied that the Applicant has have fulfilled all the legal requirements relating to the Child's adoption. Section 186 of the *Children Act*, 2022 provides. The court may make an adoption order on application by-
 - (1) (a) Sole applicant; or
 - (b) Two spouses jointly.
 - (2) The court shall not make an adoption order in any case unless-
 - i. the applicant has attained the age of twenty-five years, but is not above the age of sixty-five years; and
 - ii. 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.
19. This Court is alive to the Jurisdiction of the High Court vide Article 165 Constitution of Kenya 2010 and Section 183(1) *Children Act* 2022. The Court is conscious of the law; Article 53 Constitution of Kenya 2010, Section 8 of *Children Act* 2022 and the *UN Convention on the Rights of the Child & African Charter on the Rights & Welfare of the Child* all amplify on the best interests of the child.

Determination

20. On the basis of a careful examination of the documents presented before me as well as the observations made therein, this Court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicant.
21. Subsequently, I allow the prayers sought in the Application dated 23rd August, 2023 and order as follows:
 - I. The Applicant JNG be hereby allowed to adopt RGW (A Child).
 - II. Henceforth, the child shall be known as rgw.
 - III. Her date of birth shall be 2nd October, 2012.
 - IV. She is presumed to be a citizen of Kenya by birth.



- V. TWG shall be the Legal Guardian of the child.
- VI. The Registrar General to enter this order in the Adoption Register.
- VII. The Director Immigration is authorised to issue the child with a Kenyan Passport.
- VIII. The Guardian Ad litem is discharged.

It is so ordered.

DELIVERED DATED & SIGNED IN OPEN COURT ON 26TH APRIL, 2024.

P. NYAUNDI

JUDGE

In presence of: -

Sylvia Court Assistant

Mr. Ogollah Advocate for the Applicant

