



REPUBLIC OF KENYA



**In re Estate QFN aka QFN De W (Subject) (Adoption Cause E004 of 2024)  
[2024] KEHC 4762 (KLR) (Family) (25 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 4762 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
ADOPTION CAUSE E004 OF 2024  
HK CHEMITEI, J  
APRIL 25, 2024**

**IN THE MATTER OF**

**VJDW ..... 1<sup>ST</sup> APPLICANT  
MJWDWNN ..... 2<sup>ND</sup> APPLICANT**

**JUDGMENT**

1. Before this Court is the application dated 15<sup>th</sup> December, 2023. The Applicants VJDW and MJWDWNN are seeking to be authorized to adopt Baby QFN hereinafter referred to as the child and upon adoption, the child is to be known as QFNDW. TWNN was appointed as the child's legal guardian upon granting of the adoption orders.
2. The Applicants are a married couple and Dutch and Kenyan citizens as is evidenced by copies of their Foreigner Certificate and Kenyan National Identity Card. VJDW is a retired consultant and MJWDWNN is an auditor. Their financial capability and ability to provide for the child are evidenced by their monthly income and expenditure as tabulated in the declaration report dated 18<sup>th</sup> March, 2024 and issued by the Kenya Children's Homes Adoption Society.
3. Their health status is good as is evidenced by their medical reports and they do not have any previous criminal records as is evidenced by Certificate of Conduct issued by the Government of Netherlands and Certificate of Good Conduct issued by the Directorate of Criminal Investigations. They have indicated the adoption process is meant to allow them acquire parental responsibility over their genetic and biological child who was born out of gestational surrogacy.
4. The report from the Ministry of Labour and Social Protection State Department for Social Protection and Senior Citizen Affairs – Department of Children's Services (Nairobi County) dated 11<sup>th</sup> March, 2024 indicates that the child is female and 3 years old. She is Kenyan and Dutch, whose biological parents are known. The child was born at Agha Khan Hospital by the surrogate mother in a gestational



surrogacy where ova and the gametes were harvested from VJDW and MJWDWNN and implanted into her womb through a scientific process known as In Vitro Fertilization (IVF) and immediately upon birth, the child was handed over to VJDW and MJWDWNN in accordance with the surrogacy agreement dated 26<sup>th</sup> January, 2021.

5. The child was declared free for adoption on 20<sup>th</sup> April, 2022 by Kenya Children's Home Adoption Society *vide* freeing Certificate Serial Number 938.
6. There is consistent message that there is the urge for VJDW and MJWDWNN to conduct the adoption process so as to allow them acquire parental responsibility over their genetic and biological child who was born out of gestational surrogacy.
7. The child is a Kenyan and Dutch citizen by virtue of Article 14 (1) which provides that a person is a citizen by birth if on the day of the person's birth, whether or not the person is born in Kenya, either the mother or father of the person is a citizen.
8. In light of the best interests of the child principle provided for under Article 53 (2) of *the Constitution* of Kenya, 2010. Sections 8 (1), (2) and (3) of the *Children's Act* No. 29 of 2022 and the 1<sup>st</sup> Schedule of the *Children's Act* No. 29 of 2022, this Court has an obligation to prioritize the child's best interests in making decisions touching on her.
  - a. Article 53 of *the Constitution*, 2010 states that a child's best interests are of paramount importance in every matter concerning the child.
  - b. Sections 8 (1), (2) and (3) of the *Children's Act* No. 29 of 2022 provides as follows;
    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.
    2. All judicial and administrative institutions, and all persons acting in the name of such institutions, when exercising any powers conferred under this Act or any other written law, shall treat the interests of the child as the first and paramount consideration to the extent that this is consistent with adopting a course of action calculated to: -
      - a. safeguard and promote the rights and welfare of the child;
      - b. conserve and promote the welfare of the child; and
      - c. secure for the child such guidance and correction as is necessary for the welfare of the child, and in public interest.
  3. In any matters affecting a child, the child shall be accorded an opportunity to express their opinion, and that opinion shall be taken into account in appropriate cases, having regard to the child's age and degree of maturity.
    - c. The First Schedule as provided for under Section 8 (1) of the *Children's Act* No. 29 of 2022 provides best interests considerations to be as follows:
      1. The age, maturity, stage of development, gender, background and any other relevant characteristics of the child.



2. Distinct special needs (if any) arising from chronic ailment or disability.
  3. The relationship of the child with the child's parent (s) and/ or guardian (s) and any other persons who may significantly affect the child's welfare.
  4. The preference of the child, if old enough to express a meaningful preference.
  5. The duration and adequacy of the child's current living arrangements and the desirability of maintaining continuity.
  6. The stability of any proposed living arrangements for the child.
  7. The motivation of the parties involved and their capacities to give the child love, affection and guidance.
  8. The child's adjustment to the child's present home, school and community.
  9. The capacity of each parent or guardian to allow and encourage frequent and continuing contact between the child and the other parent and/ or guardian (s), including physical access.
  10. The capacity of each parent and/ or guardian (s) to cooperate or to learn to cooperate in child care.
  11. Methods for assisting parental and/ or guardian cooperation and resolving disputes and each parent's/guardian's willingness to use those methods.
  12. The effect of the child if one parent/ guardian has sole authority over the child's upbringing.
  13. The existence of domestic abuse between the parents/guardian (s), in the past or currently, and how that abuse affects the emotional stability and physical safety of the child.
  14. The existence of any history of child abuse by a parent and/ or guardian (s); or anyone residing in the same dwelling as the child.
  15. Where the child is under one year of age, whether the child is being breast - fed.
  16. The existence of a parent's(s) or guardian's(s) conviction for a sex offense or a sexually violent offense under the *Sexual Offences Act*.
  17. Where there is a person residing with a parent or guardian, whether that person; -
    - a. Has been convicted of a crime under this *Act*, the *Sexual Offences Act*, the *Penal Code* or any other legislation.
    - b. Has been adjudicated of a juvenile offence which, if the person had been an adult at the time of the offence, the person would have been convicted of a felony.
  18. Any other factor which may have a direct or indirect effect on the physical and psychological well -being of the child.
9. The report from the Ministry of Labour and Social Protection State Department for Social Protection and Senior Citizen Affairs – Department of Children's Services (Nairobi County), the report from the Kenya Children's Homes Adoption Society, the guardian ad litem and the proposed legal guardian



indicate that the child is well known to the adoptive parents and that she will be well taken care of in their care and custody.

10. I find that this adoption gives VJDW and MJWDWNN a chance at acquiring parental rights and responsibility over the child.
11. In the circumstances, I allow the Originating Summons dated 15<sup>th</sup> December, 2023 and make the following orders:
  - (a) The Applicants VJDW and MJWDE WNN are authorized to adopt the child known as QFN.
  - (b) Upon adoption, the child shall be known as QFN de WAAL.
  - (c) The child is declared to be a Kenyan citizen by birth and is entitled to all rights and benefits under *the Constitution* of Kenya, 2010 and all applicable laws.
  - (d) TWN is appointed as legal guardian of the child.
  - (e) The Registrar General is directed to make the relevant entries in the Adopted Children's Register in respect of the child.
  - (f) The Registrar of births and deaths is directed to issue a birth certificate in respect of the child's new name.

It is so ordered.

**DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 25TH APRIL 2024.**

**H.K CHEMITEI**

**JUDGE**

