



REPUBLIC OF KENYA



KENYA LAW
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**In re ADM (Child) (Adoption Cause E001 of 2024)
[2024] KEHC 8115 (KLR) (27 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 8115 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
ADOPTION CAUSE E001 OF 2024
FN MUCHEMI, J
JUNE 27, 2024**

IN THE MATTER OF

DKG 1ST APPLICANT

AMM 2ND APPLICANT

JUDGMENT

Brief Facts

1. The Originating Summons dated 8th February 2024 seeks for orders of adoption of baby ANM to be known as ANK upon adoption. The plaintiff seeks for further orders that the Registrar General be directed to make an entry in the Adopted Children’s Register for the said adoption.

The Applicants’ Case

2. The applicants describe themselves as husband and wife married under Kikuyu Customary Law in 2020. The 2nd applicant is the biological mother of the minor. The applicants state that they have a child together named JGK who was born on 29th May 2023. The baby herein ANM was born on 17th March 2016 aged seven (7) years. The 2nd applicant avers that the child’s biological father abandoned the minor since birth and all efforts of his whereabouts have been futile and unknown.
3. The applicants state that the family has lived with the minor for over 3 years to date.
4. The applicants state that they have always acted in the best interests of the child by loving him and providing for all his needs including his education. The applicants further wish to adopt the minor to become part of their family without any discrimination whatsoever.
5. The applicants argue that they have met the legal requirements as to age required in adoption proceedings and that they have the necessary means to give the children a decent upbringing both in morals and finances.



Issue for determination

6. The main issue for determination is whether the applicants have satisfied the legal requirements under the Children's Act to be granted orders for adoption.

The Law

7. The preliminary requirements for the making of an adoption order are set out in Section 184(1) of the Children's Act which provides as follows:-

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.

8. Thus for an adoption order to ensue the following ought to be taken into consideration:-
 - a. A child must be at least six (6) weeks old and free for adoption;
 - b. The child concerned must have been in the continuous care and control of the applicant within Kenya for a period of three (3) consecutive months preceding the filing of the application; and
 - c. Both the child and the applicant have been evaluated and assessed by a registered adoption society in Kenya.
9. In the instant adoption cause, pursuant to the Birth Certificate, the child was born on 17th March 2016 and therefore he is eight (8) years and 3 months, well above the six (6) week age limit provided for by the law. The applicants further told the court that the adoption society is not involved in the matter.
10. From the record, the biological father of the child is known to the 2nd applicant but she avers that she does not know of his whereabouts and all efforts to trace him have been futile. She further states that she separated from the child's biological father as he was physically violent and did not take support or take care of the child. There is also on record, a Children's Officer Report dated 29th April 2024 which confirms the fact that the 2nd applicant had the minor on 17th March 2016 and they initially lived together with the biological father of the child but he did not provide for the minor or take care of him.
11. The court has a duty to assess the suitability of the applicants as adoptive parents to the child. The 2nd applicant is the biological mother of the child whereas the 1st applicant is the husband of the child's biological mother. The applicants have sworn on their affidavit that they are married under Kikuyu Customary Law and have been living as husband and wife since the year 2020. The applicants have demonstrated that they are resident in Ngoingwa Estate in Thika and made it their home. It is therefore not in dispute that this is a kinship or family adoption. A kinship adoption is a domestic adoption and the requirements for kinship adoption are well set out in Part XIV of the Children's Act as follows:-
 - a. The applicant is above twenty five years of age and below sixty five years of age;
 - b. The applicant is a relative of the child;
 - c. The child has been declared free for adoption;
 - d. That all the reports and evaluations conducted indicate that it is in the best interests of the child that the applicant adopts the child as demonstrated by the fact that they are family, and that the applicant has been educating and providing for the child since birth
 - e. The child has given her consent to being adopted by the applicant;



- f. The biological parents have given their consent.
12. In deciding upon any matter involving a child, courts are obligated to give priority to the best interests of the child pursuant to Article 53 of *the Constitution*. The report by the Director of Child Services shows that the applicants are in a stable family and they have jointly cared and provided for the child for the past three years. The report and the Affidavit of means by the applicants indicate that the applicants are financially stable to provide for the child with the 1st applicant earning a monthly salary of Kshs. 60,000/- as a paediatrician. Both applicants were examined and found to be medically fit.
13. It has been stated on oath that the biological father of the minor was physically abusive to the 2nd applicant and deserted her and the baby early in the life of the child. As such, his whereabouts are unknown. It is therefore right and fitting that the consent of the father be dispensed with.
14. The report recommends the adoption of the minor and further provides that the applicants have satisfied all the other requirements for a local adoption as per the *Children Act* 2022. It is further recommended that the adoption if allowed would make the child's life more stable. That notwithstanding, the applicants have not fulfilled the requirements for adoption pursuant to the Act as they have not provided the certificate declaring that the child is free for adoption, the child has not given his consent to being adopted by the 1st applicant and the 1st applicant did not attach or produce documents to confirm criminal clearance. Therefore, the applicants having not met all the necessary requirements for purposes of adoption and considering the best interests of the child, the originating summons dated 8th February 2024 is not allowed as prayed.
15. However, the applicants may approach the court in way of review should they meet the requirements of the law as pointed out.
16. It is hereby so ordered.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SINGED AT THIKA THIS 27TH DAY OF JUNE 2024.

F. MUCHEMI

JUDGE

