



**In re Baby GJB (Minor) (Adoption Cause E013 of 2024)
[2024] KEHC 10459 (KLR) (Family) (29 August 2024) (Judgment)**

Neutral citation: [2024] KEHC 10459 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E013 OF 2024
H NAMISI, J
AUGUST 29, 2024
IN THE MATTER OF THE CHILDREN ACT, CAP 141 OF THE LAWS OF KENYA
AND
IN THE MATTER OF ADOPTION OF BABY GJB (MINOR)**

**IN THE MATTER OF
JWK APPLICANT**

JUDGMENT

1. Before this Court is the Originating Summons dated 19 January 2024, Statement in Support of the Application for an Adoption Order and Affidavit in Support of the Application, seeking:
 - i. That the Applicant, JWK, be authorised to adopt GJB and he be known as KJK;
 - ii. That the child be presumed to be a Kenyan citizen by birth;
 - iii. That the Registrar General be directed to enter the adoption in the Adopted Children Register;
 - iv. That the Director Immigration be authorised to issue the child with a Kenyan passport;
 - v. That the Applicant be authorised to travel with the child and live with her in the United States of America;
 - vi. That MSA and BWM be appointed the legal guardians of the child in the event of death or incapacity of the Applicant before the child of age or independent;
 - vii. That the consent of the biological parents be dispensed with;
 - viii. That this court be pleased to make any further orders it deems necessary.
2. The matter was canvassed by way of viva voce evidence on the virtual platform on 27th June 2024.



The Child

3. The child (male) was born on 16th December 2014. He is currently 9 years old. The child was found abandoned on 11th September 2012 at Soweto Slums, Nairobi County. The matter was reported to the Police vide OB No xx/11/09/2013. The child was committed to Mogra Children's Home by the Children's Court at Nairobi on 16th December 2019.
4. The child was declared free for adoption by the KKPI Adoption Society, a registered Adoption Agency, vide the annexed Certificate serial number 843. I am, therefore, satisfied that this legal pre-requisite for an adoption has been met.

The Applicant

5. The Applicant is a Kenyan with dual citizenship. She resides in both Kenya and the USA, where she is a Professor at the University of [Particulars withheld], College of Nursing. She is single and financially stable, earning a gross monthly income of USD 8,904.11. The Applicant does not have any biological children, and it is her desire to leave a legacy by raising children. She is desirous of exercising parental responsibility over the child and give the child the basic needs and protection.
6. I have considered the Summons, the evidence on record as well as the various reports filed.
7. The duty of this Court is to analyse the material before it to determine whether the Applicant is a suitable adoptive parent. The Applicant states that she is a practising Christian and intends to raise the child in the Christian faith. She is a member of [Particulars withheld] Church and is in a prayer team. The Applicant has annexed copies of bank statements, Valuation Report for the home in the USA, Payslips and a copy of the Agreement for Sale for an Apartment in Nairobi, as proof of her financial stability.
8. The Applicant has annexed a copy of clearance certificate from the Kenya Police Service as proof that she has no criminal record.
9. Although prayer 6 of the Originating Summons refers to 2 proposed legal guardians, the Applicant only called one as a witness. The Applicant has appointed MSA as legal guardian. The said legal guardian signed a consent dated 5th January 2024 indicating his willingness to step in and care for the child in the event the Applicant is unable to provide for the child. MSA resides in Magadi and knows the Applicant as his mentor, both personally and professionally.
10. From the material availed, I am satisfied that the Applicant is a suitable adoptive parent.

Analysis and Determination

11. Article 14 (4) of The *Constitution* provides as follows:

A child found in Kenya who is, or appears to be, less than 8 years of age, and whose nationality and parents are not know, is presumes to be a citizen by birth.
12. The child was found abandoned within the Republic of Kenya the same day she was born. I, therefore, declare that the child is a citizen of Kenya by birth.
13. The child was abandoned and all efforts by the police to trace the child's parents/relatives have borne no fruit. In the circumstances, there exists no known person from whom consent for this adoption can be sought and/or obtained. I, therefore, waive this requirement in line with section 185 (4)(b) of the *Children Act*, Cap 141 of the Laws of Kenya.



14. In deciding any matter involving a child, the court is obligated to give priority to the best interest of the child. Section 8 of the *Children Act* provides:
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 the public interest.
15. This child who was abandoned faced an uncertain future in the children’s homes and other similar institutions. This adoption, therefore, allows the child the opportunity to be raised in a stable and loving home environment.
16. I have considered the Reports filed by the Adoption Agency, the Guardian ad Litem, the Director of Children Services, all of which were positive and recommended the adoption. I was able to see the child online. He is happy, healthy and cheerful. He is a student at [Particulars withheld] School, enrolled in Grade 4. He says that he loves his mom, the Applicant, dearly particularly because she makes very good pilau. The child has been residing with the Applicant since December 2023. He appeared to be very comfortable with the Applicant.
17. It is, therefore, my view that the adoption does serve the best interests of the child.
18. Accordingly, I allow the Summons and make the following orders:
- i. That the Applicant, JWK is allowed to adopt the child currently identified as GJB;
 - ii. Upon adoption, the child shall be renamed as KJK;
 - iii. The child is declared to be a Kenyan citizen by birth, entitled to all the rights and privileges under the Constitution of Kenya and all applicable laws;
 - iv. MSA is appointed as legal Guardian of the child,
 - v. The guardian ad Litem is hereby discharged;
 - vi. That the Registrar-General be directed to make the appropriate entries in the Adopted Children’s Register;

DATED AND DELIVERED AT NAIROBI THIS 29 DAY OF AUGUST 2024

HELENE R. NAMISI

JUDGE OF THE HIGH COURT



Delivered on a virtual platform in the presence of
Mr. Ruiru.....for the Applicant

