



**In re Baby JD (Minor) (Adoption Cause E089 of 2024)  
[2024] KEHC 10462 (KLR) (Family) (29 August 2024) (Judgment)**

Neutral citation: [2024] KEHC 10462 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
ADOPTION CAUSE E089 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 JD (MINOR)  
S. W. N ..... APPLICANT**

**JUDGMENT**

1. The Applicant has filed Originating Summons dated 25th March 2024, seeking the following orders:
  - i. That the Applicant, SWN, be allowed to adopt the child currently identified as Baby J.D;
  - ii. That henceforth, the child be renamed as L.J.W;
  - iii. That the child's date and place of birth be declared to be 1st November 2022 in Kisumu County;
  - iv. That the child be presumed to be a Kenyan citizen by birth and consequently be entitled to all the rights and benefits in respect thereof;
  - v. That C.N.N and N.O.A be appointed as legal guardians of the child in the event that the Applicant herein is incapacitated or in any way unable to discharge her parental obligations;
  - vi. That the Guardian *ad Litem* be discharged;
  - vii. That the Registrar General be directed to make the appropriate entries in the Adopted Children's Register;
  - viii. That this Court do issue such further orders as are in the interest of justice;
2. The Summons is accompanied by a Statement in Support of the Application for an Adoption Order, Affidavit in Support of the Application and annexures thereto.



3. The matter was canvassed by way of *viva voce* evidence on the virtual platform on 4th July 2024.

### **The Child**

4. The child (female) was born on 1 November 2022. She is almost 2 years old. A letter from the Kisumu County Referral Hospital dated 4 November 2022 indicates that the child was found abandoned at Molem by a good Samaritan, and was admitted at the hospital for medical care. The matter was reported to the Kasagam Police Station, Kisumu, vide OB No 14/1/11/2022 (Annexure SN18). Upon discharge from the Hospital, the child was placed at New Life Home in Kisumu. The child was formally committed to the New Life Home by the Children's Court at Winam on 30th March 2023 (Annexure SN 26)
5. The child was declared free for adoption by the Buckner Kenya Adoption Services, a registered Adoption Agency, vide the annexed Certificate serial number 0706. I am, therefore, satisfied that this legal pre-requisite for an adoption has been met.

### **The Applicant**

6. The Applicant is a Kenyan citizen, residing in Lukenya, Athi River, Machakos County. She is aged 41 years and is employed, earning a gross monthly salary of Kshs 692, 292/= . The Applicant is single and has no other children. Her motivation to adopt the child stems from her desire to be a mother. She is happy to open her home to a child in need. In her Personal Statement, the Applicant notes that she has always been involved in charity work and visiting children's homes. At this point in her life, the Applicant feels settled professionally and personally to be able to adopt a child. Annexure SN 6)
7. The child was placed with the Applicant on 17 November 2023. The Applicant has hired a nanny to care for the child when the Applicant is at work. The Applicant confirmed that she is fully aware of the implications of an adoption order and that the same is irreversible.
8. At the hearing, it was noticeable that the child was very comfortable with both Applicant, though she could not speak coherently.

### **The Adoption Application**

9. I have considered the Summons, the evidence on record as well as the various reports filed to support the suitability of the Applicant as an adoptive parent. The Applicant states that she is a practising Christian and intends to raise the child in the Christian faith. She is a parishioner at the Mt Zion Ministries International (Annexure SN5)
10. The Applicant has annexed copies of bank statements and copies of her pay slips as proof of their financial stability. She has provided a copy of clearance certificate from the Kenya Police Service and Recommendations letters as well in proof of her character and good standing.
11. The Applicant presented C.N.N and N.O.A as proposed legal guardians for the child. The said legal guardians, a married couple, signed a consent dated 20 March 2024 indicating their willingness to step in and care for the child in the event the Applicant is unable to provide for the child (Annexure SN 13A). C.N.N is a sister to the Applicant, while N.O.A is her brother-in-law. The couple has 3 children. The proposed legal guardians confirmed that they understood their role.
12. From the material availed, I am satisfied that the Applicant is a suitable adoptive parent.



## Analysis and Determination

13. 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 known, is presumed to be a citizen by birth.

14. The child was found abandoned within the Republic of Kenya a few days after she was born. I, therefore, declare that the child is a citizen of Kenya by birth.

15. The child was abandoned and all efforts by the police to trace the child's parents/relatives have borne no fruit. The letter dated 9 October 2023 from Kasagam Police Station, Kisumu (Annexure SN 27) indicates that no one has shown up to claim rightful ownership of the child. 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.

16. 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.

17. This child who was abandoned soon after birth 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.

18. 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 and confirmed that she appeared healthy and happy. It is, therefore, my view that the adoption does serve the best interests of the child.

19. Accordingly, I allow the Originating Summons and make the following orders:

- i. That the Applicant, S.W.N, is allowed to adopt the child currently identified as Baby J.D;
- ii. Upon adoption, the child shall be renamed as L.J.G;



- 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. C.N.N and N.O.A are appointed as Legal Guardians of the child,
- v. The Guardian *ad Litem* is hereby discharged;
- vi. That the Registrar-General is 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

Ms. Kimenyi.....for the Applicant

