



**In re GM (Minor) (Adoption Cause E124 of 2024)  
[2024] KEHC 10483 (KLR) (Family) (29 August 2024) (Judgment)**

Neutral citation: [2024] KEHC 10483 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
ADOPTION CAUSE E124 OF 2024  
H NAMISI, J  
AUGUST 29, 2024**

**IN THE MATTER OF**

**SMW ..... 1<sup>ST</sup> APPLICANT**

**LNK ..... 2<sup>ND</sup> APPLICANT**

**JUDGMENT**

1. The Applicants have filed Originating Summons dated 28 May 2024, seeking the following orders:
  - i. That the Applicants, S.M.W and L.N.K, be allowed to adopt the child currently identified as Baby G.M;
  - ii. That henceforth, the child be renamed as J.S.W;
  - iii. That the child’s date and place of birth be declared to be 3 August 2022 at Embu 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 R.W.K. and D.K.G be appointed as legal guardians of the child, in the event that the Applicants herein are incapacitated or in any way unable to discharge their 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.

### **The Child**

4. The child (male) was born on 3 August 2022 in Embu County. The initial letter from Embu Police Station indicates that the child was found abandoned at the Embu Market Old Stores. The matter was reported vide OB No. 19/02/9/2022. The child was then committed to Angela Embu Children's Home by the Children's Court in Embu, Case No. E039 of 2022.
5. The final letter from the Embu Police Station dated 12 July 2023 indicates that no one came forth to claim the child. The child was declared free for adoption by the Buckner Kenya Adoption Services, a registered Adoption Agency, vide the annexed Certificate serial number 0672. I am, therefore, satisfied that this legal pre-requisite for an adoption has been met.

### **The Applicants**

6. The Applicants are Kenyan citizens, residing in Ruaka, Kiambu County. They are a couple, married for the last 18 years. The Applicants have one adopted daughter, aged 9 years. They are aged 46 and 45 years, respectively. The 1st Applicant is an ICT officer, while the 2nd Applicant is a full-time mom.
7. The child was placed with the Applicants on 12 July 2023. The DCS Report and Guardian ad Litem Report indicate that the child has bonded well with the Applicants and the older sister. The Applicants confirmed that the immediate family has also accepted the child herein. Both Applicants confirmed that they are fully aware of the implications of an adoption order and that the same is irreversible.

### **The Biological Parents**

8. From the DCS Report dated 4 June 2024, the child was abandoned soon after birth. As confirmed by the Letters from Embu Police Station, efforts to trace the biological parents were futile. 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.

### **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 Applicants as adoptive parents. The Applicants state that they are practising Christians and intend to raise the child in the Christian faith.
10. The Applicants has annexed copies of bank statements, copies of 1st Applicant's pay slips, copies of Share Certificates and Certificates of Allotment as proof of their financial stability. They have provided copies of clearance certificates from the Kenya Police Service and Recommendations letters as well in proof of their character and good standing.
11. The Applicants presented R.W.K and D.K.G as proposed legal guardians for the child. The said legal guardians, a married couple, signed a consent Affidavit dated 28 May 2024 indicating their willingness to step in and care for the child in the event the Applicants is unable to provide for the child. R.W.K is a sister to the 2nd Applicant, while T.M.N is her brother-in-law. The proposed legal guardians confirmed that they understood their role and responsibilities.



12. From the material availed, I am satisfied that the Applicants are suitable adoptive parents.

### **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 abandoned soon after birth. I, therefore, declare that the child is a citizen of Kenya by birth.

15. 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.

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. It is, therefore, my view that the adoption does serve the best interests of the child.

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

- i. That the Applicants, S.M.W and L.N.K, are allowed to adopt the child currently identified as Baby G.M;
- ii. Upon adoption, the child shall be renamed as J.S.W;
- 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. R.W.K and D.K.G 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**

**Delivered on a virtual platform in the presence of**

Ms. Kimenyi.....for the Applicants

