



**In re Baby NR (Adoption Cause E083 of 2024)  
[2024] KEHC 13914 (KLR) (Family) (16 August 2024) (Judgment)**

Neutral citation: [2024] KEHC 13914 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**FAMILY**

**ADOPTION CAUSE E083 OF 2024**

**BK NJOROGE, J**

**AUGUST 16, 2024**

**IN THE MATTER OF THE CHILDREN ACT (ACY NO. 29 OF 2022)**

**AND**

**IN THE MATTER OF BABY NR**

**AND**

**IN THE MATTER OF AN APPLICATION FOR ADOPTION**

**IN THE MATTER OF**

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

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

**JUDGMENT**

1. This Judgment is in respect of an Adoption application by the Joint Applicants. It is by way of an Originating Summons dated 5<sup>th</sup> March, 2024. The Joint applicants seek for the following orders.
  - a. That the Applicants, EMM and FWNM be authorized to adopt the child currently identified as BNR.
  - b. That henceforth, the child be renamed as AMFM
  - c. That the child’s date and place of birth be declared to be 22<sup>nd</sup> September, 2022 at Nairobi County.
  - d. That the child be presumed to be a Kenya Citizen by birth, and consequently, be entitled to all the rights and benefits in respect thereof.



- e. That EKM and CEW 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.
  - f. That the Guardian Ad Litem be discharged.
  - g. That the Registrar General be directed to make the appropriate entries in the Adopted Children's Register.
  - h. That this Court do issue such further orders as are in the interest of justice.
2. The Originating Summons is presented to Court pursuant to Section 2, 3, 7, 8, 11, 12, 17, 31, 183, 185, 186, 187, 188(4), 193, 194, 1995, 200, 201, 210 and 211 of the *Children Act (Act No. 29 of 2022)* and Section 24 of the *Interpretation and General Provisions Act*, (Chapter 2 of the Laws of Kenya) Section 9 of the Citizenship and Immigration Act, 2011, Article 83 of the *Constitution* of Kenya and all other enabling provisions of the Law.
  3. The Joint Applicants are Kenya Citizens. They were married on 26<sup>th</sup> November, 2011 at the Central Kingdom Hall in Nairobi. They are in a monogamous relationship. The 1<sup>st</sup> Applicant is 43 years old. The 2<sup>nd</sup> Applicant is 41 years old.  
  
The 1<sup>st</sup> Applicant is a sales representative with [particulars withheld] East Africa while the 2<sup>nd</sup> Applicant is a stay-at-home mum. They both profess the Christian faith. They intend to raise the child as a Christian based on their faith and values.
  4. The Applicants do have one biological child of their own named ANM who is 9 years old as per birth certificate serial No. 38XXX21.
  5. A Guardian Ad Litem report dated 10<sup>th</sup> June, 2024 has been filed. This is pursuant to Section 188(2) (b) of the *Children Act* Cap 141 of the Laws of Kenya. The Guardian was approved vide an order made on 11<sup>th</sup> July, 2024 before the Court.
  6. The Director of Children's Services has also filed a report dated 20<sup>th</sup> May, 2024.
  7. The Joint Applicants appeared in Court virtually on 11<sup>th</sup> July, 2024. The Court was able to watch the close family bond that they have formed with their 1<sup>st</sup> child as well as with the child the subject of this adoption. The Court listened to their evidence and their motivation to get and raise a second child, by way of adoption. They wish to extend their love to another child as well as expand their family. They are willing to share their resources with another person. They are ready to provide a home to the child. Their 1<sup>st</sup> child will now get a baby sister. It is expected that the two Children will bond and grow up as siblings, enjoying the love and experience of a wider family. The Joint Applicants have the necessary financial resources to take care of the child. The Court has no doubt as to their motivation to adopt. An adoption will benefit the child and will be for her best interest.
  8. The Court also heard Alexander Malala Libendi a representative of the Buckner Kenya Adoption Services. He confirmed that the case committee of the Adoption Society in its sitting of 26<sup>th</sup> July, 2023 declared the child free for Adoption. A certificate Declaring a Child Free for Adoption No. 0685 was issued on 26<sup>th</sup> July, 2023. The Certificate is a mandatory, requirement of the law as per Section 184 (1) (b) of the *Children Act* Cap 141 of the Laws of Kenya. The Adoption Society supports the adoption.
  9. The Court has noted the Reports filed by the Guardian Ad Litem and the Director of Children Services. They are filed without any reservations to the adoption process.



10. The Joint Applicants have also made provision for the appointment of the Child's Legal Guardians. This is in the case of unforeseen circumstances or their incapacity. They have proposed EKM a brother of the 1<sup>st</sup> Applicant and CEW a spouse to EKM who is a Sister In-Law to the Joint applicants. The two proposed Guardians also appeared before the Court virtually. They confirmed their consents. The proposal for appointment of a Legal Guardian is in line with Section 195 of the Children Act Cap 141 of the Laws of Kenya. Equally this proposal serves in the best interests of the child.
11. The Court has noted that the child the subject matter of this adoption was found abandoned at Ngomongo area within Kasarani in the County of Nairobi. She was rescued on 22<sup>nd</sup> September, 2022 by one Mildred Agihe Amenyio. The umbilical cord was said to be very fresh as evidence of a very recent birth. It is therefore presumed that the baby was born within the Kasarani area on 22<sup>nd</sup> September, 2022. The baby was taken to Happy Life Children's Home in the same Kasarani area. The baby was formally committed into the Happy Life Children's Home through the children's Court at Nairobi MCP&CCO E586 of 2020 on 11<sup>th</sup> November, 2022. The Court has noted that a Report was made in the Kasarani Police Station vide OB NO. 38/23/09/2022. The Court has seen the letter from Kasarani Police Station dated 23<sup>rd</sup> September, 2023. In the circumstances the Court is satisfied that the child was found abandoned and the natural parent(s) cannot be found. The consent of the natural parents as required by Section 187(1) of the Children Act Cap 141 of the Laws of Kenya is dispensed with, pursuant to Section 186 (8) (ab) of the Children Act Cap 141 of the Laws of Kenya.
12. The Joint Applicants received the child into the case on 4<sup>th</sup> August, 2023. The Court has seen the foster care agreement dated 4<sup>th</sup> August, 2023 with Happy Life Children's Home.
13. The Joint Applicants do not have any criminal records. They have obtained Certificates of Good Conduct No. PCC6XXXX5VL dated 23<sup>rd</sup> June, 2022 and PCC-B5XXXX7L dated 11<sup>th</sup> January, 2023 respectively.
14. The Child was found abandoned on 22<sup>nd</sup> September, 2022. The initial Police report confirms this date. His assessed date of birth is given as 22<sup>nd</sup> September, 2022. It is only just and proper that the date of 22<sup>nd</sup> September, 2022 be maintained as the birth date of the child. This will henceforth be her birth date in absence of a birth notification card, or any other birth records. Her place of birth will be Nairobi.
15. There is also issue of the child's nationality. The child was found abandoned in Ngomongo area within the Kasarani sub-county which is under the County of Nairobi in the Republic of Kenya. Article No. 14 (4) of the Constitution of Kenya states as follow;
  - “(4) a Child found in Kenya who is, or appears to be, less than eight years of age, and whose nationality and parents are not known, is presumed to be a citizen by birth.”
16. The Child has a right to Citizenship. The Constitution confers the right of Kenya Citizenship to a child found abandoned within the Kenyan territory.
17. The Court has considered the application before it in its entirety.
18. The Court has also heard all the parties who appeared before it. All the reports filed and presented support the adoption.
19. The Court finds that it is in the best interests of the child that she gets a stable home where she will be loved, nurtured and allowed to grow to her full potential. In turn she will contribute to the growth of this great Nation as a great Citizen of this Country.



20. The Court notes that the Joint applicants have a strong desire to provide a home to the child. They wish to expand their family. They have prayed about their decision and demonstrate a strong desire to adopt this child.
21. The Court has gone through the joint Applicants' letter dated 8<sup>th</sup> February, 2024. It is a testimonial on the motivation and their journey into adoption. They have involved their daughter AN who has penned a letter to the Court, styled consent letter. She too supports the adoption. She is below the age of 10 years and hence she is legally not required to give her consent. The Court nevertheless notes with appreciation that she is supportive to her parents in the adoption process. The desire of the Joint Applicants is to expand their family. The Court will not begrudge them of such orders. The Court wishes them all the best as they bring up the child.

### **Determination**

22. The Court grants the prayers sought in the Originating Summons dated 5<sup>th</sup> March, 2024 in the following terms;
  - a. That the Applicants, EMM and FWNM be and are hereby authorized to adopt the child currently identified as BNR.
  - b. That henceforth, the child be renamed as AMFM.
  - c. That the child's date and place of birth be and is hereby declared to be 22<sup>nd</sup> September, 2022 at Nairobi County.
  - d. That the child be and is hereby presumed to be a Kenyan Citizen by birth; and consequently, be and is hereby entitled to all the rights and benefits in respect thereof.
  - e. That EKM and CEW be and are hereby 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.
  - f. That the Guardian Ad Litem be and is hereby discharged.
  - g. That the Registrar General be directed to make the appropriate entries in the Adopted Children's Register.
23. It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 16<sup>TH</sup> DAY OF AUGUST, 2024.**

**NJOROGE BENJAMIN. K**

**JUDGE**

**In the presence of: -**

Miss Kimenyi..... for the Applicants

Court Assistant - Luyai.....

