



**In re Baby MH (Adoption Cause E090 of 2023)
[2024] KEHC 16819 (KLR) (Family) (12 August 2024) (Judgment)**

Neutral citation: [2024] KEHC 16819 (KLR)

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

FAMILY

ADOPTION CAUSE E090 OF 2023

BM MUSYOKI, J

AUGUST 12, 2024

IN THE MATTER OF THE CHILDREN ACT

AND

IN THE MATTER OF BABY MH

AND

IN THE MATTER OF APPLICATION FOR ADOPTION

IN THE MATTER OF

PKN 1ST APPLICANT

NWK 2ND APPLICANT

JUDGMENT

1. The applicants have approached the court with prayers enumerated in the originating summons dated 25th March 2024. The summons is supported by a joint affidavit of the applicants dated 25th March 2024 and statement of the applicants dated 25th March 2024. Annexed to the supporting affidavit are various documents including a report by Buckner Kenya Adoption Services.
2. The documents and evidence produced before the court show that the child who was born on 28-06-2018, was found abandoned in Westlands in Nairobi in the company of a homeless man on 6-08-2018. Prior to this, the applicant had on 11-02-2021 made an application to Buckner Kenya Adoption Services asking to be considered for adoption of a child. They were taken through the process of examination, evaluation and investigations to ascertain their suitability to adopt a child. The agency found that the applicants met the legal and all prerequisites to adopt a child. In its committee sitting of 15-07-2021, Buckner Kenya Adoption Services was satisfied that the applicants were fit to adopt a



child. The committees report on the suitability dated 27-05-2024 was signed by Irene Ogutu and was produced in court by Mary Karuri.

3. The applicants are a married couple and have another adopted child. The first applicant is in the construction industry whereas the 2nd applicant operates a saloon business. They confirmed to the court that they have enough resources to take care of their family including the child herein. They also confirmed that they understand the effect of the adoption order especially that it is not reversible and the child herein attains the rights of a biological child including inheriting them. With that knowledge, they are still interested in adopting the child. The child was placed in the care of the applicants on 26-01-2022 by Hope House Babies Home. They adopted their statement and affidavit sworn on 25-03-2024.
4. The court had occasion of engaging the child who is now six years. The child told me that she attends school at Agaza Daima Learning Centre. She was intelligent enough to remember the name of her school and teacher. She also referred to the applicants as mum and dad which in my observation was a sign of strong bond between the child and the applicants.
5. I also heard from AWW of identity card number 2216XXXX and his wife JWW of identity card number 2416XXXX. The two were the proposed Legal Guardians of the child. They confirmed to me on oath that they had accepted to act as the Legal Guardians of the child and that they understood the purport of their formal appointment as such. Their consent to commitment to being the Legal Guardians dated 3-11-2020 was part of the documents produced in court. They are aware that their responsibility entails taking over parental responsibilities and duties over the child herein in the event that the applicants become incapable or unavailable to discharge their parental responsibilities. They were ready to take up the role in case the eventuality arose.
6. DAO was appointed by this court as Guardian Ad Litem on 18-04-2024. She told the court that upon her appointment, she visited the home of the applicants and undertook assessment of the child's wellbeing as well as the suitability of the applicants in adopting the child. She concluded that it was in the best interest of the child that the adoption herein be granted. She produced her report dated 30-05-2024.
7. I also took evidence of Ezekiel Kimani an Assistant Director in the Department of Children Services. He told the court that the department investigated and made inquiry in respect of the proposed adoption. After their assessment, it was the opinion of the department that the applicants were suitable adoptive parents and recommended that this court grants the orders sought. He produced their report prepared to that effect dated 28-05-2024. The same is signed by Winfred Ikinya an Assistant Director of Children Services and Mary Arati also an Assistant Director of Children Services.
8. Article 53(2) of *the Constitution* and Section 8 of the *Children Act* dictates that whenever a matter involves or concerns a child, the paramount point of consideration in decision making should be the best interest of the child. This is a matter involving a child. The court should therefore be concerned about the best interest of the child which should be considered in priority to any other interest. That is the core reason the procedures for adoption matters are more on the growth, welfare and the interest of the child. If an application for adoption is in the opinion of the court geared to satisfying other interests or desires which may be prejudicial to the welfare of the child, it should be denied.
9. I have gone through the documents filed in court and adopted by the witnesses. All the reports filed by the necessary bodies and agencies are positive and recommend that the adoption orders in this matter be granted as prayed. I have also had an opportunity to interview the child and I am convinced that the child is comfortable and in the right hands. The applicants have proved that they will be capable of taking care of the child whose future was bleak when she was abandoned and found herself in the



hands of a homeless man. She is now old enough to recognise her environment and express herself. The only parents she knows are the applicants. When the department of children services visited the home of the applicants, they found the child surrounded by a happy family including some members of the extended family.

10. In view of the above, I am inclined to grant the originating summons and I hereby make the following orders;
 1. PKN and NWK are hereby authorized to adopt Baby Marion Hope.
 2. The child shall henceforth be named as KWK.
 3. It is declared that the child's date of birth is 28th June 2018.
 4. The child is declared to be a Kenyan citizen by birth and entitled to all rights, privileges and benefits of a Kenyan Citizen by birth.
 5. AWW and JWW are hereby appointed as the Legal Guardians of the child.
 6. The Guardian Ad Litem is discharged.
 7. The Registrar General is directed to make appropriate entries in the Adopted Children's Register.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 12TH DAY OF AUGUST 2024.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT.

Judgment delivered in presence of Miss Kimenyi for the applicants.

