



In re Abandoned Baby alias Abandoned Baby Girl alias Abandoned Child alias Abandoned Baby Success alias Baby Success alias Success Zabibu the Child (Adoption Cause E157 of 2024) [2024] KEHC 15285 (KLR) (Family) (29 November 2024) (Judgment)

Neutral citation: [2024] KEHC 15285 (KLR)

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

ADOPTION CAUSE E157 OF 2024

PM NYAUNDI, J

NOVEMBER 29, 2024

IN THE MATTER OF THE CHILDREN ACT, 2022

**ABANDONED BABY ALIAS ABANDONED BABY GIRL ALIAS
ABANDONED CHILD ALIAS ABANDONED BABY SUCCESS ALIAS
BABY SUCCESS ALIAS SUCCESS ZABIBU..... THE CHILD**

IN THE MATTER OF

EVALINE MUMBUA JOHN APPLICANT

JUDGMENT

1. Vide Originating Summons, dated 12th July, 2024 the Applicant herein seeks the following orders, that:-
 - i. JWN be appointed Guardian *ad litem*.
 - ii. The Director Children’s Department, Ministry of Labour, Social Security and Services investigate the Applicant’s fitness to adopt and file a report.
 - iii. Adopt Baby Abandoned Baby Alias Abandoned Baby Girl Alias Abandoned Child Alias Abandoned Baby S Alias Baby S Alias S Z (hereafter “the child”) The child be known as ENM
 - iv. The Child be presumed to be Kenyan Citizen by birth.
 - v. The Child’s date of birth be 26th June, 2018 and the place of birth be Itaaga, Maragua.
 - vi. That the Registrar-General be ordered to make the appropriate entries in the Adopted Children’s Register.
 - vii. The Director Immigration be authorized to issue the Child with a Kenyan Passport.



- viii. EMK be appointed Legal Guardian of the Child.
- ix. The Court be pleased to make any further orders it deem necessary.
2. The Applicant is a Kenyan Citizen. The Applicant works with National Museums of Kenya as an Administrator. She got married in the year 2011 and separated in the year 2015 and initiated the process of a formal divorce in 2023. Unfortunately, their union was not blessed with children.
 3. She made an application to Little Angels Network Adoption Society seeking to adopt the child herein, investigation was carried out and upon her application being approved by the agency, the minor was placed into her custody for fostering with a possibility of adopting the child.
 4. The Applicant has been living with the minor for 5 years. she has the means to provide for the minor, she understands that the minor will have rights as a biological child including inheritance as well as the adoption order is not reversible.
 5. Abandoned Baby Alias Abandoned Baby Girl Alias Abandoned Child Alias Abandoned Baby S Alias Baby S Alias S Z (Child herein) is the subject of the present adoption proceedings is presumed to be 6 years old having been born on 26th June, 2018. It is said that the minor was found abandoned on 11th July, 2018 at Kihoru Village in Murang'a County by the members of the public.
 6. A report on the incident was made to Maragua Police Station and Itaaga Assistant Area Chief and was recorded Vide OB No 24/11/07/2018. An initial Police letter was written requesting Maragua District Hospital to take care of the child since the minor had severe burns on palms, head and chest which prompted a 3 weeks' admission.
 7. Further, the Magistrate Children's Court sitting at Kigumo in accordance with Section 119 of the [Children Act](#) 2022, committed the child to the New Life Home Trust Vide Protection and Care No MCP &CO/41 OF 2018.
 8. Change Trust Adoption Society issued a Certificate declaring the child free for adoption pursuant to Section 184 (J) of the [Children Act](#) Cap 141 of the Laws of Kenya. The said Freeing Certificate is Serial No 00XXX4 and the same is dated 12th June, 2019.
 9. The minor is in PP2 at Glad Testimony School Syokimau. According to police letter dated 11th February, 2019 no one has come forward to claim the child.
 10. JWN was appointed as the child's Guardian *ad litem* on 25th August, 2024. She filed a statutory report on 14th August, 2024 presented under Section 188 of the [Children Act](#), 2022 in which she observed that the child is well behaved, joyful and free with the Applicant. The relationship is that of Mother-Daughter relationship. She also noted that the child is very comfortable with the Applicant and loves the Applicant so much thus highly recommend the adoption of Baby S by the Applicant.
 11. Pursuant to Section 156(1) of the [Children Act](#) 2022, Damaris Kobonah Children Officer prepared and filed a favourable report dated 20th August, 2024 which was countersigned by Mary Atati Assistant Director Children's in respect of the proposed adoption of the child by the Applicant where she observed that the Applicant is the only person who has accepted to live with the minor as she has a special condition that needs a responsible person. She also observed that the Applicant is of sound mind, in good health and has a stable source of income from her current business. Consequently, the Applicant has developed a very strong bond with the child to the extent that the child comfortably calls her mum. The Applicant is God-fearing and social person who seem prepared to give a family to a second child in need of a family. She also reiterated that the child has a good bond with the other



sibling who consented to the Adoption Proceedings therefore recommended the adoption of Baby Jane Blessing Nekesa by the Applicant as it would be in the best interest of the child.

12. Applicant has bonded well with the minor, she has nominated her friend EK to be the legal guardian in case of any eventuality.
13. The Legal Guardian attended Court, she confirmed that she is a friend to the Applicant. She understands what the role entails in the event circumstances demand, she will take on full parental responsibility.
14. The minor was present and was interviewed by the Court and it was observed that the minor recognizes the Applicant as her mother.
15. The Applicant is of good health and financially capable of taking care of the child. She has no criminal record as evidenced by Police Clearance Certificate Serial Numbers PCC-AAAGOB4 dated 16th October, 2018.
16. All the Statutory Reports that have been filed in respect of the proposed adoption of the child by the Applicant have recommended that this Court allows the Applicant to adopt the child. This Court has evaluated the facts of this adoption.
17. The home visits by the guardian *ad litem* and the Director of the Children's Services established that the Applicant has the financial and emotional capability to provide for the upkeep and education of the child. This Court observed the Applicant with the child in Court and it was evident that in the period that the Applicant has had the custody of the child, the child has bonded well with them.
18. The proposed legal guardian attended Court and confirmed that they have given her consent to act as Legal Guardian.

Determination

19. After carefully assessing the records herein, I am satisfied that the Applicant has fulfilled all the legal requirements relating to the Child's adoption. Section 186 of the [Children Act, 2022](#) provides. The Court may make an adoption order on application by-
 - (1)
 - (a) Sole applicant; or
 - (b) Two spouses jointly.
 - (2) The court shall not make an adoption order in any case unless-
 - i. the applicant has attained the age of twenty-five years, but is not above the age of sixty-five years; and
 - ii. The applicant, or both of the applicants in a joint application, is more than twenty-one years older than the child.
 - (3) The restrictions in subsection (2) shall not apply in any case where a sole applicant or one of the joint applicants is the mother, father, or relative of the child.
20. This Court is alive to the jurisdiction of the High Court vide Article 165 Constitution of Kenya 2010 and Section 183(1) [Children Act](#) 2022. The Court is conscious of the law; Article 53 [Constitution](#) of Kenya 2010, Section 8 of [Children Act](#) 2022 and the UN [Convention on the Rights of the Child](#) & [African Charter on the Rights & Welfare of the Child](#) all amplify on the best interests of the child.



21. The Applicant has fulfilled all the legal requirements of a Local Adoption as required under Section 193 of the Children's Act, 2022. The guiding principle is the best interests of the child pursuant to Section 8 and 194 (1) (c) of the Children's Act Cap 141 of the Laws of Kenya. The consent of the biological parents of the child was dispensed with since the child was abandoned at birth.

22. Article 14 (4) of the Constitution of Kenya 2010 provides that: -

“(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.”

23. I am satisfied that this Adoption would be in the best interest of the child and allows the application with orders that;

- a. The Applicant, EMJ is hereby allowed to adopt Baby Abandoned Baby Alias Abandoned Baby Girl Alias Abandoned Child Alias Abandoned Baby S Alias Baby S Alias S Z.
- b. Henceforth, the child shall be known as ENM.
- c. Her date of birth shall be 26th June, 2018 at Itaaga, Maragua .
- d. She is presumed to be a citizen of Kenya by birth.
- e. EMK is hereby appointed as Legal Guardian of the child.
- f. The Director Immigration is authorised to issue the child with a Kenyan Passport.
- g. The Registrar General to enter this order in the Adoption Children Register.
- h. The guardian *ad litem* is hereby discharged.

It is so ordered.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 29TH DAY OF NOVEMBER, 2024.

P. NYAUNDI

JUDGE

In the presence of:

Fardosa Court Assistant

