



REPUBLIC OF KENYA



**In re JBN (Child) (Adoption Cause E256 of 2023)  
[2024] KEHC 15293 (KLR) (Family) (29 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 15293 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
FAMILY  
ADOPTION CAUSE E256 OF 2023  
PM NYAUNDI, J  
NOVEMBER 29, 2024  
IN THE MATTER OF THE CHILDREN ACT, 2022  
IN THE MATTER OF BABY JBN.....THE CHILD**

**IN THE MATTER OF  
LWN ..... APPLICANT**

**JUDGMENT**

1. Vide Originating Summons, dated 8<sup>th</sup> December, 2023 the Applicant herein seeks the following orders, that:-
  - i. Adopt Baby JBN (hereafter “the child”)
  - ii. The child be known as CW
  - iii. That the Registrar-General be ordered to make the appropriate entries in the Adopted Children’s Register.
  - iv. GKN and SWG be appointed Legal Guardians of the Child.
  - v. The Child be presumed to be born in Kenya.
  - vi. The Court be pleased to make any further orders it deem necessary.
2. The Applicant is a Kenyan Citizen residing in Nairobi County. She is a business lady. She got married customary way in the year 1998 to CN whom they were blessed with two children. Unfortunately, one of the children passed on. Their marriage got marital issues and the couple separated in the year 2003. Subsequently, the Applicant is living with her son GMN.



3. Through the viva voce evidence in online Court platform, the Applicant stated that she has the means to provide for the minor, she understands that the minor will have rights as a biological child as well as the adoption order is not reversible and she wishes the Court to adopt her statement in support.
4. According to the Applicant's statement her desire to adopt this minor is driven by the fact that she has passion for children and she wants to grow her family as she gives a home to a baby girl whom she has desired to have in her family.
5. Further, it is her statement that she made an application to Kenya Children's Home Adoption Society seeking to adopt the child herein 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.
6. Baby JBN (Child herein) who is the subject of the present adoption proceedings is presumed to be 14 years old having been born on 20<sup>th</sup> December, 2009 at xxxxx Village in Kakamega County. It is said that six years later, the minor was found loitering unaccompanied on the road by a Masinde Muliro University Student on the 22<sup>nd</sup> December, 2015 at around 8 pm.
7. A report on the incident was made to Kakamega Police Station on 23<sup>rd</sup> December, 2015 and was recorded Vide OB No. 34/23/12/2015. On the same day, the child was placed at Divine Providence Children's Home for safety.
8. Consequently, the Magistrate Children's Court sitting at Kakamega in accordance with Section 119 of the Children Act 2022, committed the child to the same children home Divine Providence Children's Home Vide Protection and Care No. MCP &CO/329 OF 2016.
9. Kenya Children's Homes (KCH) Adoption Society had a committee sitting on 17<sup>th</sup> August, 2022 and 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.14xx and the same is dated 21<sup>st</sup> June, 2017.
10. The child was placed in the custody of the Applicant on 21<sup>st</sup> June, 2017 for mandatory bonding prior to adoption. Due to some reasons not documented in the application, it was reported that the child had earlier returned by the Applicant to the Adoption Society and the minor was placed before the Thomas Barnados while there, the minor was diagnosed with a condition known as Lensectomy and her two eyes were operated on to correct the problem. The minor has since then been in the continuous custody and care of the Applicant and has fully bonded and her families have equally bonded and accepted the child into her family. The minor goes to Murema Primary School where she is in grade 5. According to police letter dated 31<sup>st</sup> January, 2017 no one has come forward to claim the child.
11. Mary Wairimu was appointed as the child's Guardian Ad litem on 26<sup>th</sup> January, 2024 and further directed that she and the Director of Children's Services file their respective reports in Court within 40 days.
12. Pursuant to Section 156(1) of the Children Act 2022, Mary Nnyazi Mwanguna Adaption Officer prepared and filed a favourable report on 29<sup>th</sup> November, 2023 which was countersigned by Mary Atati Assistant Children's Director 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 JBN by the Applicant as it would be in the best interest of the child.

13. Applicant has bonded well with the minor, she has appointed GKN and SWG to be the legal guardians in case of any eventuality.
14. The guardian ad litem Mary Wairimu also filed a statutory report on 12<sup>th</sup> March, 2024 made 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 JBN by the Applicant.
15. The Legal Guardians both testified, they are related with the Applicant in form of affinity. They understand what the role entails in the event circumstances demand, they will take on full parental responsibility.
16. The minor was present and the Court observed that the minor recognizes the Applicant as her mother.
17. 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-QPTW5xxxx dated 18<sup>th</sup> August, 2021.
18. 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.
19. 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.
20. The proposed legal guardians attended Court and confirmed that they have given their consent to act as Legal Guardians.

### **Determination**

12. 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.



13. 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.
14. The Court has evaluated the facts of this Local Adoption from the Reports filed. It is evident that 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 remains in 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. It is evident that the Applicant has fulfilled all the legal requirements relative to the adoption of the child. The consent of the biological parents of the child was dispensed with since the child was abandoned at birth. This Court has satisfied itself that the Applicant is qualified and able to take care of the child. All the necessary Reports and consents required for this Adoption have been filed.
15. 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.”

13. This Court is therefore of the opinion that this Adoption would be in the best interest of the child and allows the application with ORDERS that;

SUBPARA a.

The Applicant, LWN is hereby allowed to adopt Baby JBN.

- b. Henceforth, the child shall be known as CWW.
- c. Her date of birth shall be 20<sup>TH</sup> December, 2009 at xxxx Village in Kakamega.
- d. She is presumed to be a citizen of Kenya by birth.
- e. GKN and SWG are hereby appointed as Legal Guardians 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 29<sup>TH</sup> DAY OF NOVEMBER, 2024.**

**NYAUNDI**

**JUDGE**

In the presence of:

Fardosa Court Assistant

