



REPUBLIC OF KENYA



**In re Adoption of Baby NG (Minor) (Adoption Cause E005 of 2024)
[2024] KEHC 15017 (KLR) (25 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 15017 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
ADOPTION CAUSE E005 OF 2024
JM NANG'EA, J
NOVEMBER 25, 2024
IN THE MATTER OF ADOPTION OF BABY NG (MINOR)**

IN THE MATTER OF

TWM APPLICANT

JUDGMENT

1. Vide Originating Summons dated 18/4/2024 expressed to be brought pursuant to sections 154, 156, 157, 158, 159, 163 and 170 of the Children Act No 8 of 2001 (sic), the applicant prays for orders as hereunder;
 1. That the applicant herein be authorized to adopt Baby N G.
 2. That consent of the biological parents of Baby N.G be dispensed with as the child was abandoned shortly after birth.
 3. That upon making of the adoption orders the said child be known as T N W.
 4. That the court be pleased to appoint AKM as the legal guardian of the child upon granting of the adoption order.
 5. That the Registrar General does make the appropriate entry of the child in the adoptive children's register.
 6. That the child be presumed to be a Kenyan citizen born in Kenya.
2. It is noted that the application is brought under the repealed Children Act No. 8 of 2001 instead of the now operational Children Act No. 29 of 2022. Nevertheless, the court will ignore the technical defect of dint of Article 159 (2) (d) of the Constitution and determine the merits of the application.
3. The application is supported by the applicant's affidavit evidence in which she expresses her desire to adopt N.G, a child aged two (2) years or thereabouts. The child was said to have been abandoned



and by a court order was committed to New Life Children's Home (Nakuru) on 16/12/2022. N.G. was thereafter declared free for adoption and handed to the applicant who has been in custody of the child. The applicant who is 38 years old avers that she is capable of taking care of the child and exhibited evidence of her employment as Secretary with Ikua Investments Agency earning Kshs. 35,000/= per month. The court is further told that the applicant's family members are not opposed to the application.

4. The applicant gave oral evidence in court reiterating her affidavit evidence. For medical reasons she could not have children of her own and lives alone although she has a boy friend who occasionally visits. Her bother (AKM) also testified and corroborated the applicant's evidence as to her suitability to adopt the subject child. He also stated his readiness to assume custody of the child whenever circumstances so require.
5. CWG is the child's Guardian Ad Litem appointed by this court on 10/7/2024. She positively appraises the applicant noting that she has been taking good care of the child after taking physical custody.
6. The Nakuru County Children's Co-ordinator (Viola Yego) does not also object to the application and approves the applicant as suitable to adopt the child. She testified to visiting the applicant and her family at home and found out that she comes from a good family environment and has been taking good care of the subject.
7. Having perused the reports and evidence in respect of the application, the court's duty is to determine if the applicant is fit to adopt the subject. Article 53 (2) of the Constitution provides that the child's best interests are the paramount consideration in every aspect concerning the child's welfare. This legal position is reiterated in Section 8 (1) of the Children's Act 2022 which provides that:

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be the primary consideration.”
8. This principle is underscored in Article (2) of the Geneva Declaration of the Rights of the Child (1924) as well as in Article 3 of the United Nations Convention on the Rights of the Child. The Kenyan courts in many cases including in Re B (Baby) [2018] eKLR have given effect to this important principle by restating that the law is intended to protect and promote the welfare of children by according them stable family units under which to grow. Indeed Article 45(1) of the Constitution declares as follows:

“The family is the natural and fundamental unit in society and the necessary basis of social order, and shall enjoy the recognition and protection of the State.”
9. Section 186 of Children Act provides inter alia that a sole applicant aged between 25 and 60 years and more than 21 years older than the child qualifies for an adoption order.
10. The subject child no doubt requires parental care and guidance as well as provision of basic rights like shelter and clothing. I am satisfied that the applicant has the requisite qualities and capacities to guarantee the child's welfare. She therefore meets the requirements of the law and I will allow her to adopt the minor.
11. The following orders accordingly issue;-
 - a. The applicant is hereby authorized to adopt the subject child.
 - b. The Registrar General is directed to enter this adoption order in the Adopted Children's Register and issue a Certificate to that effect.



- c. That the appointment of the Guardian Ad Litem (CWG) is revoked.
- d. That the applicant's brother (AKM) is appointed as the Legal Guardian of the child pursuant to Section 195 (1) of the [Children Act](#).
- e. That the subject child will now be known as TNW as proposed by the applicant.

J. M. NANG'EA, JUDGE.

JUDGEMENT DELIVERED VIRTUALLY THIS 25TH DAY OF NOVEMBER 2024 IN THE PRESENCE OF:

The Applicant, present

Court Assistant, Lepikas

