



**In re K alias Unknown Female Child (Child) (Adoption Cause E004 of 2023) [2024] KEHC 16090 (KLR) (20 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 16090 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
ADOPTION CAUSE E004 OF 2023  
MA ODERO, J**

**DECEMBER 20, 2024**

**IN THE MATTER OF ADOPTION OF BABY K BABY K  
ALIAS UNKNOWN FEMALE CHILD.....THE CHILD**

**IN THE MATTER OF**

**JKW ..... 1<sup>ST</sup> APPLICANT  
MNW ..... 2<sup>ND</sup> APPLICANT**

**JUDGMENT**

1. Before this Court is the Originating Summons dated 14<sup>th</sup> November 2023 by which the Applicants JKW and MNW seek the following orders:-

- “1. Spent
- 2. That the Applicants JKW and MNW be authorized to legally adopt BABY K (the minor) who was born on 26<sup>th</sup> January 2021.
- 3. Spent
- 4. That the Honourable court be pleased to appoint ANW of ID Number 10XXXX26 as next of kin and legal guardian to the minor herein.
- 5. That the minor be presumed to be a Kenya citizen by birth and be accorded all rights of immigration that accrue to Kenyan citizens.
- 6. That the Register General do make the appropriate entry of Baby K in the Adopted childrens Register and a subsequent Birth Certificate do issue by the Registrar of Births and Deaths.



7. That the Honourable Court do issue such further orders as are in the interest of justice.”
2. The application was supported by the statement dated 10<sup>th</sup> November 2023 sworn by the Applicants. The matter was canvassed by way of Vive Voce evidence in chambers.
3. The Applicants are a couple who got married to each other on 5<sup>th</sup> December 1995. Their union did not bear any issue and as such the couple opted to turn to adoption as a means to complete their family.
4. The Applicants told the Court that they already have two (2) sons whom they adopted on 14<sup>th</sup> February 2017 and 16<sup>th</sup> May 2023 respectively. This being their third adoption, they now wish to adopt a girl-child.
5. The Applicants confirmed to the Court that they both understand the legal implications of an adoption order. They undertook to accord to the subject child all rights and privileges due to a biological child including the right of inheritance.

### **Analysis and Determination**

6. I have considered this application for adoption, the evidence adduced in support thereof as well as the various reports filed in court.
7. The prerequisites for adoption are set out in Section 184 (1) (a) and (b) of the *Childrens Act* 2022 as follows:-
  - “(1) A person shall not commence any arrangement for the adoption of a child unless:-
    - a. The council, in accordance with the rules, has declared the child free for adoption.
    - b. The child has attained the age of six weeks.”
8. The subject-child is believed to have been born on 26<sup>th</sup> January 2021. She is now aged about three and a half (3<sup>1/2</sup>) years old and is above the six (6) weeks age limit provided for in law.
9. Little Angels Network which is a registered adoption agency have annexed to their report a certificate Serial No 00XX54 dated 5<sup>th</sup> May 2023 declaring the child free for Adoption. Accordingly I am satisfied that all the prerequisites for an adoption order have been met.
10. The duty of this court is to analyze the evidence on record to determine whether the Applicants are suitable adoptive parents.
11. The Applicants are both Kenya citizens as evidence by the Annexed copies of their National Identity cards (Annexure JKW1 and JKW2). The couple have no biological children of their own hence the desire to adopt.
12. The Applicants are a couple who got married to each other on 5<sup>th</sup> December 1998 at the [particulars withheld] EPCK Church. A copy of their marriage certificate Serial No 96XX55 appears as Annexure ‘JKW3’ to the Summons.
13. The 1<sup>st</sup> Applicant is a teacher employed by the [particulars withheld] Commission. He has annexed copies of his pay slip as proof of this fact (Annexure ‘JKW4’).



14. The 2<sup>nd</sup> Applicant is a Pre-School teacher employed by the County Government of [particulars withheld]. She has also annexed copies of her pay slip as proof of employment. I am satisfied that the Applicants have the financial capacity to care for the subject child.
15. The Applicants are both Christians and intend to raise the child in the Christian faith. They have filed copies of clearance certificates issued to them by the Directorate of Criminal Investigations confirming that neither has a criminal record.
16. They have also annexed copies of their medical records as proof that both are physically and mentally fit (Annexures JKW12 and JKW13).
17. The applicants are not new to adoption as they have previously adopted two male children. They have appointed the brother of the 1<sup>st</sup> Applicant as the legal guardian for the child.
18. The proposed legal guardian AN has signed an Affidavit of consent dated 10<sup>th</sup> November 2023 confirming his willingness to step in as legal guardian in the event the Applicants become unable or are unavailable to care for the child. (Annexure 'JKW '10')
19. Based on the material presented before this court I find that the Applicants are suitable adoptive parents.
20. The mother of the subject child sought refuge in the home of a Good Samaritan in Mucatha, Kiambu County. The child's mother who was in the process of delivering her baby and her grandmother knocked on the door of a Good Samaritan and sought for help.
21. The Good Samaritan assisted the girl to deliver her baby. Thereafter the mother abandoned the baby saying that she was the result of an incestuous relationship.
22. The abandonment was reported at Mucatha Police Post vide OB Number 2 of 26<sup>th</sup> January 2021. Thereafter on 20<sup>th</sup> July 2021 the Kiambu Childrens Court committed the child to Nest Childrens Home for care and Protection. On 14<sup>th</sup> June 2023 the child was released into the custody of the Applicants under a Foster Care Arrangement.
23. 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.”
24. The subject child was found abandoned at the age of one (1) day within Kiambu County in the Republic of Kenya. Efforts by police to trace the biological mother and/or relatives of the child have borne no fruit. To date no person has come forward to claim the child. A final police letter dated 10<sup>th</sup> August 2021 (Annexure JKW 13) confirms this fact. I therefore declare the child to be a citizen of Kenya by birth.
25. Given the fact of her abandonment there exists no known person from whom consent for this adoption can be sought and/or obtained. In the circumstances, I do waive the requirement for consent in line with Section 187 (1) (a) *Children Act* 2022.



26. In deciding upon any matter involving a child, courts are obliged to give priority to the ‘best interests’ of the said child. Section 8 (1) of the [Children Act](#) 2022 provides that:-

“(8) In all actions concerning children, whether undertaken by public or  
(1) private social welfare institutions, courts of law, administrative authorities or legislative bodies -

a. The best interests of the child shall be the priority consideration” [own emphasis]

27. This is a child who was abandoned at birth. She faced an uncertain future living in childrens homes/ institutions. This adoption provides the child with the opportunity to be raised in a loving and stable home environment.

28. The child has lived with the Applicants for over one (1) year. I have no doubt she has bonded with the entire family.

29. I was able to see the child in my chambers. She was a healthy and active girl who was obviously at ease in the company of the Applicants.

30. I have perused the reports prepared by the Guardian *ad litem*, the Adoption Agency and the Director Childrens services. All three reports were positive and all recommended the adoption.

31. Finally I am satisfied that this adoption serves the best interest of the subject child. Accordingly I allow this application and make the following orders.

- (1) The Applicants JKW and MNW are authorized to adopt the child known as ‘Baby K’
- (2) Upon adoption the child will be known as FBNK.
- (3) The child is declared to be a Kenyan citizen by birth and is entitled to all rights and benefits in respect thereto.
- (4) ANW is appointed as the legal guardian for the child.
- (5) The Registrar General is directed to make the relevant entry in the Adopted childrens Register.
- (6) No orders on costs.

**DATED IN NYERI THIS 20<sup>TH</sup> DAY OF DECEMBER, 2024.**

**MAUREEN A. ODERO**

**JUDGE**

