



**In re N aka Abandoned Baby (Adoption Cause E082 of 2020)
[2023] KEHC 482 (KLR) (Family) (27 January 2023) (Judgment)**

Neutral citation: [2023] KEHC 482 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E082 OF 2020
MA ODERO, J
JANUARY 27, 2023**

IN THE MATTER OF

LKW APPLICANT

JUDGMENT

1. Before this court is the originating summons dated December 4, 2020 by which the applicant seeks the following orders:-
 - “ 1. That the applicant LKW be and is hereby authorized to adopt Baby N (aka Abandoned Baby Girl) and the child be called BWW after adoption.
 2. That JGW be and is hereby appointed legal guardian of the child in the event a misfortune befalls the applicant rendering her unavailable or incapable of taking care of the child.
 3. That the registrar general be and is hereby ordered to make the appropriate entries in the adopted children’s register in respect of BWW.
 4. That the child was born in Kenya of Kenyan parents and is therefore a Kenyan by birth and is entitled to a Kenyan passport.”
2. The application was supported by the statement of even date sworn by the applicant. The matter was canvassed by way of *viva voce* evidence on the virtual platform.
3. The applicant LKW is a single woman who has no biological child of her own. She seeks to adopt the subject child in order to complete her family.



4. The applicant told the court that she fully understands the legal implications of an adoption order. She undertakes to accord to the subject child all the rights due to a biological child including the right to inherit.

Analysis and Determination

5. I have considered this application, the reports filed in court as well as all the evidence adduced in support thereto. The prerequisites for adoption are set out in section 184 (1) of the [Children Act](#) 2022 which provides –

“ 184(1) A person shall not commence any arrangements 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.”

6. The subject child is believed to have been born on July 12, 2016. As such the child is now aged 6 ½ years and is well above the six (6) week age limited provided for in the law.
7. Little Angel Network a registered adoption agency have annexed to their report dated January 31, 2019 the original copy of their certificate serial No xxxx dated January 31, 2019 declaring the subject child free for adoption. I therefore find that all the legal prerequisites for an adoption order have been met.
8. The duty of this court is to analyze the evidence on record to determine whether the applicant is suitable adoptive parent. The applicant is a Kenyan citizen as evidenced by the copy of her national identity card, which is annexed to the summons (annexture ‘1’).
9. The applicant has never been married and has no child of her own due to medical complications. She now seeks to adopt the subject child out of a desire to have a child of her own.
10. The applicant is in gainful employment. She works as an ECD teacher with [particulars withheld]. She has annexed to the summons a copy of her letter of appointment dated September 5, 2019 (annexture ‘5’). The applicant has also annexed copies of her bank statements for an account held at Equity bank, Limuru branch (annexture ‘6’). The applicants earns a monthly salary of approximately Kshs 20,000 which is adequate to enable her meet the needs of the child.
11. In addition the applicant owns property in Mai Mahiu and Namanga. I am satisfied that the applicant is financially secure.
12. The applicant is a committed christian and intends to raise the child in the christian faith. She was examined by a doctor and found to be mentally and physically fit.
13. The applicant has also annexed a copy of clearance certificate issued by the directorate of criminal investigations (Annexture ‘7’) proving that she no criminal record.
14. The applicant informed the court that her extended family are aware of and support her intention to adopt the subject child. The applicant has appointed her brother as legal guardian for the child. The proposed legal guardian JGW has signed a consent dated November 23, 2016 confirming his willingness to be appointed as legal guardian.
15. Based on the evidence on record, i am satisfied that the applicant is a suitable adoptive parent.



16. The subject child was abandoned in a house in Zimmerman estate when she was about one (1) year old. The child was left unattended in the house for several days. On June 12, 2017 a good samaritan rescued the child. The abandonment was reported at Kasarani police station *vide* OB No xx of xxth June xxxx.
17. Thereafter on September 22, 2017 the Nairobi Children’s Court committed the child to Happy Life Children’s Home for care and attention. On November 10, 2020 the child was released to the custody of the applicant under a foster care agreement.
18. Article 14 (4) of the *Constitution* of Kenya 2010 provides that:-

“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 of Kenya ”
19. The child herein was found abandoned aged only one (1) year old in a house in Zimmerman estate, Nairobi county, in the republic of Kenya. The child is therefore presumed to be a citizen of Kenya by birth.
20. Efforts by the police and the adoption agency to trace the biological parents and/or relatives of the child have been unsuccessful. To date no person has come forward to claim the child. A final police letter dated May 16, 2018 is annexed to the summons (annexure '10-(b)).
21. Given the fact of her abandonment there exists no known person from whom consent for this adoption can be sought and/or obtained. In circumstances, I do waive the requirement for consent in line with section 187(1) of the *Children's Act 2022*.
22. 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:-

“(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 primary consideration;” (own emphasis)
23. The subject child who was abandoned one year after her birth. She faced uncertain future living in various childrens homes and other similar institutions. This adoption allows the child the opportunity to be raised in a loving and stable home environment.
24. The subject child has lived with the applicant since April 2019. I have no doubt that the child has bonded with the applicant. This is the only parent the child knows.
25. I was able to see the child online. She was a healthy girl and though shy, was able to answer questions put to her by the court. The child referred to the applicant as ‘mum’.
26. A home visit was conducted on October 22, 2021. The applicant lives in the homestead of her aunt and uncle in Ndeiya Limuru Kiambu county. She has her own house which is a two bedroomed bungalow within the compound. The home is well secured and is close to several social amenities. The home was found to be spacious, clean and conducive for raising a young child.
27. I have perused the reports prepared by the adoption agency, the guardian *ad litem* and the director of children services. All three reports were positive and all recommend the adoption.



28. All in all I find that this adoption will serve the best interest of the subject child. I therefore allow this application and make the following orders:-

1. The applicant LKW is authorized to adopt the child known as BabyN aka Abandoned Baby Girl.
2. Upon adoption the child will be known as BWW.
3. The child is presumed to be a Kenyan citizen by birth and is entitled to all the rights and privileges pursuant thereto.
4. The registrar-general is directed to make the relevant entry in the adopted childrens register.
5. JGW is appointed as the legal guardians for the child.

DATED IN NAIROBI THIS 27TH DAY OF JANUARY, 2023.

MAUREEN A. ODERO

JUDGE

