



**In re Baby OA (Adoption Cause E112 of 2022)
[2023] KEHC 111 (KLR) (Family) (20 January 2023) (Judgment)**

Neutral citation: [2023] KEHC 111 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E112 OF 2022
MA ODERO, J
JANUARY 20, 2023**

IN THE MATTER OF

**DMM 1ST APPLICANT
YWK 2ND APPLICANT**

JUDGMENT

1. Before this court is the ex parte originating summons dated July 8, 2022 by which the applicants DMM and YWK seek the following orders:-
 - ' 1. That the applicants DMM and YWK be allowed to adopt the child currently identified baby OA.
 2. That henceforth, the child be renamed ATM.
 3. That the child's date and place of birth be declared to be April 1, 2021 at Machakos County.
 4. That the child be presumed to be a Kenyan citizen by birth and consequently entitled to all the rights and benefits in respect thereof.
 5. That consent of the child's biological parents/guardians be dispensed with.
 6. That CWM be appointed as the child's legal guardian in the event that the applicants herein are incapacitated or in any way unable to discharge their parental obligations before the child is fully self-reliant.
 7. That the guardian ad litem be discharged.



8. That the registrar general be directed to make the appropriate entries in the adopted children's register.
 9. That this court do issue such further orders as are in the interest of justice.'
2. The application was supported by the statement of even date sworn by the applicants. The matter was canvassed by way of viva voce evidence on the virtual platform.
 3. The applicants are a couple who got married to each other in August 2016. The couple have no biological children of their own due to medical complications. They now seek to adopt the subject child in order to complete their family. The 2nd applicant also stated that having herself been orphaned at a young age she was adopted by her paternal uncle. She now wishes to provide a needy child with a home.
 4. The applicants both confirm that they fully understand the legal implications of an adoption order. They undertake 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 a boy who was born on April 1, 2021. A copy his birth certificate serial No xxxx is annexed to the summons (annexture 'DM-20'). The child is therefore now aged approximately two and a half (2½) years old and is above the six (6) week age limited provided for in the law.
7. Buckner Kenya Adoption Services which is a registered adoption agency have annexed to their report the original copy of their certificate serial No xxxx dated January 18, 2022 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 applicants are suitable adoptive parents. The applicants are both kenyan citizens as evidenced by the copy of their national identity cards (annexures 'DM4 (a) and 4 (b)').
9. The applicants are a couple who got married to each on August 12, 2016 at [particulars withheld] in Kiambu County. A copy of their marriage certificate serial No 69XXX is annexed to the summons (annexture 'DM 6'). The couples union has not yet been blessed with a biological child hence the desire to adopt a child.
10. The applicants are both gainfully employed. The 1st applicant runs a business whilst the 2nd applicant works as a legal officer with [particulars withheld] Ltd. The 2nd applicant has annexed copies of her payslips (annexture 'DM 8').
11. The applicants realize a joint income of approximately Kshs 300,000 per month, which is more than sufficient to provide for the needs of a growing child. The couple have also annexed



copies of title deeds for properties which they own (annexture 'DM 9C'). I am satisfied that the applicants are financially secure.

12. The applicants are both committed Christians and hold active leadership roles in their church. They intend to raise the child in the Christian faith. They have annexed a recommendation letter dated June 30, 2021 written by Dr MM the pastor of [particulars withheld] Church where the couple worship (annexture 'DM 5').
13. The applicants have both been examined by a doctor and were found to be both mentally and physically fit. They have annexed a copies of the clearance certificates issued to them by the Directorate of Criminal Investigations proving that they have no criminal record (annexture 'DM11 A' and '11B').
14. The applicants told the court that their families are aware of and support their intention to adopt the subject child. They have appointed CWM who is the elder sister of the 1st applicant as the legal guardian for the child. The proposed legal guardian has signed a consent dated June 28, 2022 confirming her willingness to act as the legal guardian for the child.
15. All in all, I am satisfied that the applicants are suitable adoptive parents.
16. The subject child was born on April 1, 2021 in the xxxx area of Makueni County. A good samaritan noticed a lady in distress suffering from labor pains. The good samaritan took the woman to her home and assisted her to deliver the boy child. The next day the child's biological mother left claiming that she was going to fetch water from a nearby river. The mother never returned. After four (4) days, the good samaritan reported the matter to local authorities.
17. The abandonment of the child was reported at Mlolongo Police Station vide OB No xx of April 4, 2021. Thereafter on April 17, 2021 Mavoko childrens court committed the child at [particulars withheld] Centre for care and protection. On March 11, 2022 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 subject child was abandoned in Makueni County, in the Republic of Kenya. He is therefore presumed to be a citizen of Kenya by birth.
20. Given the fact of his abandonment there exists no known person from whom consent for this adoption can be sought and/or obtained. I therefore waive the requirement for consent in line with section 187(1) of the Children's Act 2022.
21. 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). (1) In all actions concerning children, whether undertaken by public or 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)



22. The subject child was abandoned one (1) day after his birth. Efforts to trace the biological mother of the child have borne no fruit. To date no person has come forward to claim the child. A copy of the final police letter dated October 15, 2021 is annexed to the summons.
23. The child faced an uncertain future living in children's homes and other similar institutions. This adoption allows the child the right to be raised in a loving and stable home environment.
24. The child has lived with the applicants for a period of over one (1) year. He has no doubt bonded with the applicants. I was able to see the child online. He was a healthy cheerful toddler who was excited to see himself on the camera and kept shouting 'hi' to the court.
25. A home visit was conducted on October 25, 2022. The applicants live in [particulars withheld] in their own three bedrooomed apartment. The home is in a secure compound and was found to be spacious and suitable for raising a young child. The applicants often work from home and are able to spend a lot of time with the child.
26. I have carefully perused the reports prepared by the adoption agency, the guardian ad litem and director of children services. All three reports were positive and all recommend the adoption.
27. In conclusion, I am satisfied that this adoption will serves the best interest of the subject child. I therefore allow the application and make the following orders:-
 1. The applicants DMM and YWK are authorized to adopt the child known as baby OA.
 2. Upon adoption the child will be known as ATM.
 3. The child is presumed to be a Kenyan citizen by birth and is entitled to all the rights and privileges thereto.
 3. The registrar-general is directed to make the relevant entry in the adopted childrens register.
 4. CWM is appointed as the legal guardian for the child.

DATED IN NAIROBI THIS 20TH DAY OF JANUARY, 2023.

.....

MAUREEN A ODERO

JUDGE

