



**In re Baby ZZO (Adoption Cause E093 of 2022)
[2023] KEHC 110 (KLR) (Family) (20 January 2023) (Judgment)**

Neutral citation: [2023] KEHC 110 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E093 OF 2022
MA ODERO, J
JANUARY 20, 2023
IN THE MATTER OF CHILDRENS ACT 2001
IN THE MATTER OF APPLICATION FOR ADOPTION OF
BABY ZAWADI ZEDDY OMONDI
BY**

IN THE MATTER OF

**JNM 1ST APPLICANT
JWM 2ND APPLICANT**

JUDGMENT

1. Before this court is the Originating Summons dated June 10, 2022 by which the Applicants seek the following order:-
 1. That the Applicants be authorized to adopt Baby ZZO an infant who is to be known as Warari Mwatha Ngugi and the Registrar General be directed to enter this adoption into the Register of Adoptions.
 2. That MWM be appointed as the legal guardian of the minor who shall be presumed to have been born in Kenya.
2. The application was supported by the affidavit of even date sworn by the Applicants. The matter was canvassed by way of viva voce evidence on the virtual
3. The Applicants JNM and Joice WM are a couple who got married to each other in the year 2017. Due to medical complications, the couple have not born any children together. They now seek to adopt the subject child in order to complete their family and to give a needy child a home.



4. The Applicants confirm that they fully understand the legal implications of an adoption order. They each undertake to accord to the child all 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 January 31, 2021. He now aged 1 ½ years old and is way above the six (6) week age limit provided for by the Law.
7. Buckner Kenya Adoption Services which is a registered Adoption Agency have annexed to their report a Certificate Serial No xxxx dated November 30, 2021 declaring the Subject child Free for Adoption (Annexture 'JJ5'). I am therefore satisfied that all the legal prerequisites for an adoption order have been met.
8. The duty of this court is to analyze the evidence to determine whether the applicant are a suitable adoptive parents.
9. The Applicants are both Kenyan Citizens as evidenced by the annexed copies of their National Identity cards (Annexture 'JJ-1').
10. The Applicants are a married couple who solemnized their union on March 31, 2017 at [particulars withheld] Church in Machakos County. They have annexed to the summons a copy of their Marriage Certificate Serial No xxxx. (Annexture 'JJ-2'). The couple have no biological child of their own hence the desire to adopt a child.
11. The Applicants are both gainfully employed. The 1st Applicant works as a Media Producer with [particulars withheld] whilst the 2nd Applicant is a Program Manager with [particulars withheld] . The couple also run company together, which deals in leather products.
12. Annexed to the summons is a copy of the 1st Applicants Bank Statement in respect of an account held with Equity Bank (Annexture 'JJ3'). The couple together realize a monthly income of approximately Kshs 300,000 which is sufficient to provide for the needs of the child I am satisfied that the Applicants are financially secure.
13. The Applicants are both Christians and intend to raise the child in the Christian Faith. They were both examined by a doctor and found to be in good health. The applicants have both annexed copies of clearance Certificates issued to each by the Directorate of Criminal Investigations confirming that neither has a criminal record (Annexture 'JJ3').
14. The Applicants told the court that their extended family are aware and support their intention to adopt the child. They have appointed the 2nd Applicants sister as the legal guardian for the child. The proposed legal guardian M W M has signed a consent dated January 31, 2021 confirming her



willingness to act as the legal guardian for the child. All in all I am satisfied that the Applicants are suitable adoptive parents.

15. The subject child was born on January 31, 2021. The child was abandoned on February 8, 2021 in a homestead in Katolo, Kisumu County. The owner of the homestead PAO rescued the baby who had been left behind her kitchen and the following day reported the matter to the local chief. Together with the chief they went to Boya Police Station where the abandonment was reported vide OB Number 7 of February 9, 2021. The baby was rushed to Jaramogi Oginga Odinga Referral Hospital for medical attention.
16. On March 30, 2021 the Nyando Childrens Court committed the child to New Life Trust Home in Kisumu for care and attention. On December 29, 2021 the child was released into the custody of the Applicants under a Foster Care Agreement.
17. 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'
18. The subject child was abandoned at the age of one (1) week within Kisumu County in the Republic of Kenya. The child is therefore presumed to a citizen of Kenya by birth.
19. Efforts to trace the biological mother/relatives of the child have not been successful. To date no person has come forward to claim the child. A final Police letter dated September 24, 2021 is annexed to the summons.
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;'
22. This is a child who was abandoned at birth. He faced uncertain future living in various homes and other similar institutions. This adoption allows the child the opportunity to be raised in a stable and loving home environment.
23. The child has lived with the Applicants in their home since December 2021. He has no doubt bonded with the Applicants and views them as his parents. I was able to see the child online. He was a healthy, toddler who was happy and cheerful playing with his parents.
24. A home visit was conducted on October 22, 2022. The Applicants reside in a rented two bedroomed house in Kinoo. The house was found to be clean with adequate space and facilities. The environment was conducive for raising a young child. The Applicants have also employed a Nanny to assist in caring for the child.
25. I have carefully 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.



26. In conclusion I find that this adoption does serve the best interest of the subject child. Accordingly, I therefore allow the application and make the following orders:-

1. The Applicants JN Mand JWM are authorized to adopt the child known as Baby ZZO.
2. Upon adoption the child will be known as WMN
3. The child is presumed to a citizen of Kenya by birth and is entitled to all rights and privileges arising thereto.
4. The Registrar-General is directed to make the relevant entry in the Adopted Childrens Register
5. MWM is appointed as the legal guardian for the child.

Dated in **Nairobi** this **20th** day of ****January, 2023**.

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MAUREEN A. ODERO

JUDGE

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