



**In re DM (Child) (Adoption Cause E102 of 2022)  
[2023] KEHC 139 (KLR) (Family) (20 January 2023) (Judgment)**

Neutral citation: [2023] KEHC 139 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**FAMILY**

**ADOPTION CAUSE E102 OF 2022**

**MA ODERO, J**

**JANUARY 20, 2023**

**IN THE MATTER OF THE ADOPTION OF BABY DM ALIAS BABY UNKNOWN AFRICAN  
BABY GIRL ALIAS UNKNOWN AFRICAN GIRL ALIAS NEWBORN BABY (THE CHILD)**

**AND**

**IN THE MATTER OF AN APPLICATION FOR ADOPTION**

**BY**

**IN THE MATTER OF**

**NOO ..... 1<sup>ST</sup> APPLICANT**

**SLH ..... 2<sup>ND</sup> APPLICANT**

**JUDGMENT**

1. Before the court is the originating summons dated June 30, 2022 by which the applicants seeks the following orders:-

- “ 1. Spent
- 2. Spent
- 3. That the applicants be authorized to adopt the child, Baby DM *alias* Baby Unkown African Baby girl *alias* Unkown African girl *alias* Newborn Baby to be known as OTO.
- 4. That the child be presumed a Kenyan citizen by birth.
- 5. That the child’s date of birth be July 19, 2020 and the place of birth be Nairobi.



6. That the registrar be directed to enter the adoption in the adopted childrens register.
  7. That the director immigration be authorized to issue the child with a Kenyan passport.
  8. That MAH be appointed the legal guardian of the child in the event of the death or incapacity of the applicants before the child is of age or independent or self-reliant.
  9. That the court be pleased to make any further orders it deems necessary.”
2. The application was supported by statement of even date sworn by the applicants and 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 the year 2017. For both this was their second marriage. The 1<sup>st</sup> applicant NOO is a widower his first wife having passed away in the year 2014. The 2<sup>nd</sup> applicant SLH was also previously married but divorced her first husband in the year 2013.
  4. The applicants have not borne any biological children together. However, the 1<sup>st</sup> applicant has a daughter from his first marriage MO who is now aged nineteen (19) years old and is a student in Milan, Italy. The 2<sup>nd</sup> applicants has a son SAO whom she adopted with her ex-husband in the year 2007. This son is currently aged sixteen (16) years old and is a student at [particulars withheld] academy in Nairobi.
  5. The applicants now wish to adopt the subject child in order to expand their family. They each confirm to the court that they do understand the legal implications of an adoption order. The applicants both undertake to accord to the subject child all rights due to a biological child including the right to inherit.

### **Analysis And Determination**

6. The prerequisites which must be met before an adoption order can be made are set out in section 184 (1) (a) and (b) of the [Children's Act 2022](#) which provides as follows:-
  - “(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; and
    - (b) the child has attained the age of six weeks.”
7. The subject child is believed to have been born on July 19, 2020. Therefore, the child is now aged 2 ½ years old and is above the six (6) week age limit provided for in law.
8. Buckner Kenya Adoption Society, which is a registered adoption agency, have annexed to their report dated September 23, 2022 a certificate serial No xxxx dated April 30, 2021 declaring the child free for adoption. Accordingly, I find that the legal prerequisites for adoption order have been met.
9. The duty of this court is to analyze the evidence on record to determine whether the applicants are suitable adoptive parents. The applicants ae both kenyan citizens as evidenced by the copies of their national identity cards which are annexed to the summons (annexture NSO ‘7’)
10. As stated earlier the applicants are a couple who solemnized their union in Nairobi on April 29, 2017. A copy of their marriage certificate serial number xxxx is annexed to the summons (annexture ‘NSO-8’).



- The couple have no biological children together but each has a child from a previous union. They now wish to adopt the subject child in order to expand their family.
11. The applicants are both gainfully employed. the 1<sup>st</sup> applicant works as a project manager with [particulars withheld] whilst the 2<sup>nd</sup> applicant is self employed running a construction business. Annexed to the summons (annexture 'NSO 11') is a copy of a certificate of registration serial No xxxx for the said business [particulars withheld].
  12. The applicants have also annexed copies of title deeds for properties which they own. I am satisfied that the applicants are financially secure and are capable of providing for the needs of the child.
  13. The applicants are both Christians and intend to raise the child in the Christian faith. They have annexed to the summons a letter of recommendation dated January 31, 2021 written by Rev Mwangi Muchiri of Mamlaka Hill Chapel (annexture 'NSO-10')
  14. The applicants were both examined by a doctor and were found to be both mentally and physically fit. They have each annexed copies of clearance certificates issued to them by the Directorate of Criminal Investigations (annexture 'NSO-13') proving that neither has a criminal record.
  15. The applicants informed the court that their respective families are aware of and support their intention to adopt the subject child. They have appointed the 2<sup>nd</sup> applicant's sister as the legal guardian for the child. The proposed legal guardian MAH has signed a consent dated January 17, 2021 indicating her willingness to be appointed as the legal guardian for the child.
  16. The 1<sup>st</sup> applicant's daughter MAO has written a letter dated January 22, 2021 giving her consent to the adoption (annexture 'NSO-9'). Likewise, the 2<sup>nd</sup> applicant's son has also written a letter consenting to the adoption.
  17. Based on the evidence availed to the court, I am satisfied that the applicants are both suitable adoptive parents.
  18. The subject child who was born on July 19, 2020 was found abandoned immediately after her birth opposite the city council dispensary next to Safaricom offices in the Westlands area of Nairobi county. A good Samaritan rescued the baby who had been born prematurely and reported the matter at Spring Valley police station *vide* OB No 4 of July 19, 2020. The baby was then rushed to Kenyatta national hospital for medical attention.
  19. On November 16, 2020 the Nairobi Children's Court committed the child to Mahali New Life Home Trust for care and protection. On August 5, 2021 the child was placed into the custody of the applicants under a foster care agreement.
  20. 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 ”
  21. The subject child was abandoned at birth in Nairobi county within the republic of Kenya. She is therefore presumed to be a Kenyan citizen by birth.
  22. Efforts to trace the biological mother of the child have not been successful. To date no person has come forward to claim the child. A final police letter dated March 31, 2021 (annexture 'NSO-5') is annexed to the summons.



23. Given that the subject child was abandoned at birth there exists no known person from whom consent for this adoption can be sought and/or obtained. In the circumstances, I waive the requirement for consent in line with section 187(1) of the Children's Act 2022.
24. 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)
25. This was a child who was abandoned five (5) days after her birth. She faced an 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.
26. The child has lived with the applicants in their home since August 2021. She has bonded with the applicants whom she views as her parents. I was able to see the child online. She was a healthy baby and energetic little girl who was very much at ease in the company of the applicants.
27. A home visit was conducted by the children officer on November 7, 2022. The applicants live in a rented home in the Kileleshwa area of Nairobi. The home is a three bed-roomed maisonette in a secure compound with adequate space and facilities for the child. The house is within close proximity to other social amenities like schools, hospitals, churches shopping, malls etc. The applicants have engaged a nanny to help care for the child.
28. I have perused the reports prepared by the adoption agency, the guardian *ad litem* and the director of children services. All were positive and all recommend the adoption.
29. In conclusion, I am satisfied That this adoption serves the best interest of the subject child. I therefore allow this application and make the following orders:-
1. The applicants NOO and SLH are hereby authorized to adopt the child known as, baby DM *alias* Baby unkown African Baby girl *alias* Unkown African girl *alias* Newborn Baby .
  2. Upon adoption the child shall be known as YTO.
  3. The child is presumed to be a Kenyan citizen by birth and is entitled to all rights and privileges arising therefrom.
  4. The registrar general is directed to make relevant entry in the adopted children register.
  5. MAH is hereby appointed as legal guardian of the child.

**DATED IN NAIROBI THIS 20<sup>TH</sup> DAY OF JANUARY, 2023.**

.....  
**MAUREEN A. ODERO**  
**JUDGE**

