



REPUBLIC OF KENYA



**In re MS (Child) (Adoption Cause E079 of 2022)
[2023] KEHC 108 (KLR) (Family) (20 January 2023) (Judgment)**

Neutral citation: [2023] KEHC 108 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E079 OF 2022
MA ODERO, J
JANUARY 20, 2023
IN THE MATTER OF ADOPTION OF MS ALIAS UNKNOWN
AFRICAN FEMALE ALIAS ABANDONED CHILD ALIAS
ABANDONED BABY GIRL.....THE CHILD
BY
CCWD APPLICANT**

JUDGMENT

1. Before this court is the originating summons dated May 25, 2022 by which the applicant CCWN seeks the following orders:-
 - “1. Spent
 2. Spent
 3. That the applicant be authorized to adopt the child, MS alias Unknown African Female alias Abandoned Child alias Abandoned Baby Girl to be known as MWN .
 4. That the child be presumed a Kenyan citizen by birth.
 5. That child’s date of birth be January 25, 2021 and the place of birth be Karatina.
 6. That the Registrar General be directed to enter the adoption in the Adopted Children Register.
 7. That the Director Immigration be authorized to issue the child with a Kenyan passport.



8. That JNN be appointed the legal guardian of the child in event of the death or incapacity of the applicant 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 summons 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 is a single woman who has never been married and has no biological child of her own due to medical complications. The applicant now wishes to adopt the subject child in order to complete her family. The applicant told the court that she herself was adopted and she now wishes to provide a needy child with a home.
 4. The applicant confirms 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 was born on January 25, 2021. A copy of the child’s birth certificate serial No xxxx is annexed to the summons (Annexure ‘CWN-‘1’). The child is therefore now aged approximately two (2) years and is well 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 a copy of their Certificate Serial No xxxx declaring the Subject child Free for Adoption. I am satisfied 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 a 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 ‘CWN-10’).
9. The applicant told the court that she has never been married and has no child of her own. She states that she wishes to adopt a child as a means of providing a needy child with a home and out of her desire to have a child of her own.
10. The applicant is in gainful employment. She runs a consultancy dealing the children Health. Annexed to the summons are copies of the Certificate of Incorporation and the CR-12 for Alta Consult Ltd (annexture ‘CWN -12’). The applicant has also annexed copies of her bank statements for an account held with NCBA Bank (annexture ‘CWN-13’). The applicant has also annexed a title deed for land she owns in Ruiru. I am satisfied that the applicant is financially stable and is able to provide for the child.



11. The applicant is a committed christian and intends to raise the child in the christian faith. Annexed to the summons is a letter of recommendation dated September 23, 2020 written by the Catechist of Consolata Shrine where the applicant worships. (Annexture ‘CWN-11’).
12. The applicant was examined by a doctor and was found to be both mentally and physically fit. She has also annexed a copy of the clearance certificate issued by the Directorate of Criminal Investigations proving that she no criminal record (annexture ‘CWN-15’).
13. The applicant told the court that her entire family are aware of and support her intention to adopt the subject child. She has appointed her sister JNN as the legal guardian for the child. The proposed legal guardian has signed a letter of consent dated September 6, 2020 indicating her willingness to act as the legal guardian for the child (annexture ‘CWN-17’).
14. From the evidence on record, I am satisfied that the applicant is a suitable adoptive parent.
15. The subject child was abandoned at birth in a farm in [Particulars withheld] village Mathira East in Nyeri County. A good samaritan rescued the baby on January 25, 2021 and reported the matter at Karatina Sub County Hospital where she was admitted for medical care and attention.
16. On March 3, 2021 the Karatina Children’s Court committed the child to New Life Home Trust for care and attention. On 31st December 2021 the baby was released to the custody of the Applicant 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 birth in Nyeri County, in the Republic of Kenya. She is therefore presumed to be a citizen of Kenya by birth.
19. Efforts by the police and the Adoption Agency to trace the biological mother/relatives of the child have borne no fruit. To date no person has come forward to claim the child. The final police letter dated November 16, 2021 is annexed to the summons (annexture ‘CWN-7’).
20. Given the fact of her 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). 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)
22. The subject child was abandoned at birth. She faced an uncertain future living in childrens homes and other similar institutions. This adoption allows the child the opportunity to be raised in a loving and stable home environment.



23. The child has lived with the applicant for a period of over one (1) year. I have no doubt that the child has bonded with the applicant whom she views as her mother. I was able to see the child online. She was a healthy toddler comfortably sitting on the lap of the applicant and playing with her mother's mobile phone.
24. A Home visit was undertaken by the children officer. The applicant lives in her own apartment located [Particulars withheld]. The house is a spacious four bedroomed home with adequate space and facilities for the child. The apartment is within a secure compound with 24 hour security and is close to several social amenities like hospitals, schools, shopping malls churches etc. The applicant has employed a nanny to assist in caring for the child. The home environment was found suitable for raising a young 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. Finally, I am satisfied that this adoption will serve the best interest of the subject child. I therefore allow the application and make the following orders:-
 1. The Applicant CCWN is authorized to adopt the child known as MS alias Unknown African Female alias Abandoned Child alias Abandoned Baby Girl.
 2. Upon adoption the child will be known as MWN .
 3. The child is presumed to be aKenyan citizen by birth and is entitled to all the rights and privileges thereto.
 4. The Registrar-General is directed to make the relevant entry in the Adopted Childrens Register.
 5. JNN is appointed as the legal guardians for the child.

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

.....
MAUREEN A. ODERO

JUDGE

