



REPUBLIC OF KENYA



**In re baby EJ (Adoption Cause E123 of 2022)  
[2023] KEHC 1386 (KLR) (Family) (24 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 1386 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
ADOPTION CAUSE E123 OF 2022  
MA ODERO, J  
FEBRUARY 24, 2023  
IN THE MATTER OF CHILDREN'S ACT NO 8 OF 2001  
AND  
IN THE MATTER OF ADOPTION OF UNKNOWN BABY  
ALIAS BABY BOY ALIAS EJ (THE CHILD)**

**IN THE MATTER OF**

**JKM ..... APPLICANT**

**JUDGMENT**

1. Before this court is the originating summons dated June 16, 2022 by which the Applicant JKM seeks the following orders:
  - “1. That JKM of Kenyan National identity Card Number 115XXX32 be authorized to Adopt unknown baby alias Baby Boy alias EJ (the child) who is a Kenyan citizen, presumably born on the 1<sup>st</sup> day of March 2017.
  2. That upon adoption, the child shall be known as EMK.
  3. That OOMS and SLM of Kenyan National Identity Card Numbers 93XXX74 and 110XXX87 respectively be appointed as legal guardians of unknown baby alias Baby Boy alias EJ (the child).
  4. That the Registrar General be directed to enter this adoption into the Register of Adoptions and a subsequent Birth Certificate do issue by the Registrar of Births and Deaths”



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 is a single woman who has no child of her own. She now seeks to adopt the subject child in order to full fill her desire to have a child of her own.
4. The Applicant confirmed to the court that she understands the legal implications of an adoption order. She undertakes to accord to the subject 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 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.”
6. The subject child is believed to have been born on or about March 1, 2017. The child is therefore now aged six (6) years old and is well above the six (6) week age limit provided for in Law.
7. Kenya Children’s Home Adoption Society which is a registered adoption agency have annexed to their report the original copy of their certificate serial No xxx dated March 17, 2021 declaring the child Free For Adoption. I am satisfied that all the legal pre requisites for an adoption order have been met.
8. The Applicant is a Kenyan citizen as evidenced by the annexed copy of her national Identity Card (Annexure ‘JKM1’). She is a single woman who has never been married and due to her medical issues has no child of her own. Hence the desire to adopt a child.
9. The Applicant is gainfully employed as a teacher employed by the Teachers Service Commission. She has annexed a copy of her Pay Slip as proof of employment JKM’2’. The Applicant also runs a poultry business to supplement her income. I am satisfied that the applicant is financially secure and is able to provide for the needs of the child.
10. The Applicant is a Christian and intends to raise the child in the Christian Faith. Annexed to the summons is a letter of recommendation dated April 14, 2021 written by Rev Fr PMV of St Joseph Catholic parish, [particulars withheld] where the Applicant worships.
11. The Applicant was examined by a doctor and was found to be both physically and mentally fit. She has annexed a copy of a clearance certificate issued to her by the Directorate of Criminal Investigations confirming that the Applicant has no criminal records.
12. The Applicant informed the court that her extended family are aware of and support her intention to adopt the subject child. She has appointed her sister and brother in law as the legal guardians for the child. The proposed legal guardians OOMS and SM have both signed an Affidavit of consent dated June 16, 2022 indicating their willingness to act as legal guardians for the child.
13. All in all I am satisfied that the Applicant is a suitable adoptive parent.



14. The subject child is a boy child who is believed to have been born on or about March 1, 2017. The child was abandoned on March 1, 2019 at [particulars withheld] in Njoro Sub-County Nakuru County. A good Samaritan rescued the child and reported the abandonment at Njoro Police Station vide OB No 38 of March 1, 2019.
15. Thereafter on April 15, 2019 the Nakuru Children’s Court committed the child to the Africa Gospel Children Baby Centre in Nakuru for care and Protection. On June 11, 2021 the child was placed into the custody of the Applicant under a Foster Care Agreement.
16. 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 (8) years of age and whose nationality and parents are not known is presumed to be a citizen of Kenya ”
17. The subject child was found abandoned at the age of two (2) years in Nakuru County in the Republic of Kenya. The child is therefore presumed to be a citizen of Kenya by birth.
18. Efforts by police to trace the biological mother and/or relatives of the child have borne no fruit. To date almost four (4) years after the child was abandoned no person has come forward to claim the child. A final police letter dated March 10, 2021 is annexed to the summons [Annexure “JKM 6”].
19. 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) (a) of the *Children Act 2022*.
20. 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)
21. This is a child who was abandoned as a toddler. He faced an uncertain future living in various childrens homes. This adoption provides the child with the opportunity to be raised in a stable and loving home environment.
22. I am mindful of the fact that the Applicant is a female seeking to adopt a male child. Although Section 158 (2) (b) of the old *Children Act 2001* prohibited the adoption of a male child by a single female applicant, no such prohibition is contained in the new *Children Act 2022*. Section 186 (4) of the 2022 Act only prohibits a single male applicant from adopting a child. The new Act is silent on the question of a female applicant adopting a child. As such I find there is no legal prohibition to this adoption.
23. The subject child has been living with the Applicant since March 2021 a period of close to two (2) years. I have no doubt the child has bonded with the Applicant and her family. Indeed this is the only family the child knows.
24. I was able to see the child online. He was a cheerful neat and articulate boy who confidently answered questions put to him by the court.



25. A home visit was conducted by the Childrens Officer. The Applicant resides in a two bed-roomed house in Machakos town. The home was found to be well furnished with adequate space and facilities for the child. The Childrens Officer noted that the environment was suitable for raising young child.
26. I have carefully perused the reports prepared by the Adoption Agency, the Guardian ad litem as well as the Director Childrens Services. All the three reports were positive and all recommend the adoption.
27. In conclusion I find that this adoption does serve the best interests of the child. I accordingly allow this application and make the following orders:-
  1. The Applicant JKM is authorized to adopt the child known as Unknown Baby alias Baby Boy alias EJ (the child)
  2. Upon adoption the child shall be known as EMK.
  3. The child is presumed to be a citizen of Kenya and is entitled to all rights and privileges thereto.
  4. The Registrar General is directed to make the relevant entry in the Adopted Childrens Register.
  5. OOMS and SLM are appointed as the legal Guardians for the child.

**DATED IN NAIROBI THIS 24<sup>TH</sup> DAY OF FEBRUARY, 2023.**

.....

**MAUREEN A. ODERO**

**JUDGE**

