



**In re Baby NL (Adoption Cause E129 of 2022)  
[2023] KEHC 1542 (KLR) (Family) (24 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 1542 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
ADOPTION CAUSE E129 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 BABY NL  
ALIAS ABANDONED INFANT (THE CHILD)**

**IN THE MATTER OF**

**JNM ..... 1<sup>ST</sup> APPLICANT  
RMN ..... 2<sup>ND</sup> APPLICANT**

**JUDGMENT**

1. Before this court is the Amended originating summons dated January 25, 2023 by which the Applicants JNM and RMN seek the following orders:-

- “1. Spent
2. Spent
3. That the Applicants be authorized to adopt NL alias abandoned infant boy to be known as JMN.
4. That the child be presumed a Kenyan citizen by birth.
5. That the child's date of birth be October 25, 2020 and the place of birth be Mlolongo, Athi River.
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 AWM and AWN 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.
  9. That the court be pleased to make any further orders it deems necessary.”
2. The application was supported by the statement dated July 25, 2022 sworn by the two 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 June 2004 in Washington USA. The couple have two (2) biological daughters who were born in the years 2006 and 2008. The couple now wish to adopt the subject child in order to expand their family and out of their desire to provide a needy child with a home.
  4. The Applicants confirms 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 believed to have been born on October 25, 2020. He is therefore now aged two and a half (2½) years old and is above the six (6) week age limit provided for in law.
7. Chance Trust Adoption Agency which is a registered Adoption Agency have annexed to their report a copy of their Certificate Serial No xxxx dated August 30, 2021 declaring the Subject child Free for Adoption. I am satisfied that all the legal prerequisites for an adoption order have been met.
8. The applicants are both Kenyan citizens as evidenced by the annexed copies of their national identity cards (Annixture ‘JSM-6’).
9. The applicants are a couple who got married to each other on June 4, 2004 in the USA where they both resided at the time. A copy of their marriage certificate Serial No. xxxx issued by the commonwealth of Virginia is annexed to the summons (Annixture ‘JSM-7’).
10. The Applicants have two (2) biological daughters namely:-
  - (i) JWNN born on December 29, 2006
  - (ii) AWNN – born on July 24, 2008.



Both daughters were born in the USA and copies of their birth certificates are annexed to the summons (Annexure 'JSM '8').

11. The Applicants told the court that they wish to adopt a third child out of a desire to expand their family, to have a son and provide a needy child with a home.
12. The Applicants are both in gainful employment. The 1<sup>st</sup> Applicant works as a cybersecurity Consultant with [Particulars withheld] Limited whilst the 2<sup>nd</sup> Applicant works as a Public Health Specialist with [Particulars withheld]. Together the couple realize a monthly income of over Kshs 1.0 million which is sufficient to enable them provide for the three children.
13. The Applicants have annexed copies of Bank Statements for accounts held with NCBA (Annexure 'JSM-'9'). In addition the Applicants own real estate in Kenya I am satisfied that the Applicants are financially stable.
14. The Applicants who are both christians worship at the Nairobi Chapel and intend to raise the child in the Christian Faith. Both were medically examined and were found to be both physically and mentally fit.
15. The Applicants were both issued with clearance certificates by the Directorate of Criminal Investigations proving that neither has a criminal record (Annexures 'JSM – 11').
16. The Applicants stated that their extended family are aware of and fully support their intention to adopt the subject child. They have appointed as legal guardians the sister and brother-in-law of the 2<sup>nd</sup> Applicant. The proposed legal guardians AWM and AWN have signed consents dated January 25, 2023 indicating their willingness to act as legal guardians for the child. All in all I am satisfied that the Applicants are suitable adoptive parents.
17. The Subject child is believed to have been born on October 28, 2020. When the child was barely three (3) days the child's biological mother handed over her baby to a stranger in a matatu in Kitengela claiming that she needed to make a purchase from a stall nearby. The mother disappeared and never returned to reclaim her baby. The Good Samaritan reported the abandonment to Mlolongo Police Station *vide* OB Number 71 of October 28, 2021.
18. Thereafter the Mavoko children's court committed the child to Mahali Pa Maisha Rescue Centre for care and Protection. On June 10, 2021 the child was released into the custody of the Applicants under a Foster Care Agreement.
19. 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.”
20. The subject child was abandoned aged barely three (3) days old in a matatu in the Mlolongo area of Machakos County in the Republic of Kenya.
21. Efforts by the police to trace the biological mother of the child have been unsuccessful. To date no person has come forward to claim the child. A final Police letter dated April 27, 2021 is annexed to the summons (Annexure 'JSM-3').
22. 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's Act 2022.



23. 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)

24. This is a child who was abandoned a few days after his birth. He 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.

25. The child has lived with the applicants since June 2021, he has no doubt bonded with the Applicants. Indeed this is the only family the child knows. I was able to see the child online. He was a healthy bubbly toddler who was very comfortable playing in the company of the applicants.

26. A home visit was conducted by the childrens officer. The applicants reside in a five bed-roomed apartment in the Westlands area of Nairobi. The home was found to be spacious with adequate security. The apartment is within the vicinity of several social amenities like schools, churches, hospitals, shopping malls etc. The Applicants have also employed a nanny to assist in caring for the child.

27. 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.

28. Finally, I am satisfied that this adoption will serves the best interest of the subject child. Accordingly, I allow the application and make the following orders:-

1. The Applicants JNM and RMN are authorized to adopt the child known as NL alias abandoned infant boy.
2. Upon adoption the child will be known JMN .
3. The child is presumed to be a Kenyan citizen by birth 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. AWM and AWN 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**

