



**In re CJ (Child) (Adoption Cause . E119 of 2022)  
[2023] KEHC 1385 (KLR) (Family) (24 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 1385 (KLR)

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

**ADOPTION CAUSE . E119 OF 2022**

**MA ODERO, J**

**FEBRUARY 24, 2023**

**IN THE MATTER OF**

**PNM ..... 1<sup>ST</sup> APPLICANT  
ENM ..... 2<sup>ND</sup> APPLICANT**

**JUDGMENT**

1. Before the court is the originating summons dated July 21, 2022 by which the applicants Peter Ndung'u Muniu and Evah Nyawira Mwai seek the following orders:-

- “ 1. Spent
2. Spent
3. That the applicants be authorized to adopt the child Baby CJ alias CJ alias Baby D B alias Abandoned Infant Girl alias Abandoned baby girl to be known as Joanne Joy Wangu Ndung'u.
4. That the child be presumed a Kenyan citizen by birth.
5. That the child's date of birth be December 21, 2019, and the place of birth be Mlolongo, Machakos.
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 Priscah Mwai 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.
2. The application was supported by the statement of even date sworn by the applicants. The matter was canvassed by way of Vive Voce evidence on the virtual platform.
3. The applicants are a couple who got married to each other in October 2012. The couple have no biological children together however they do have a daughter whom they adopted in April 2017. The applicants now wish to adopt the subject child in order to expand their family.
4. The applicants confirm that they understand the legal implications of an adoption order. They undertake 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 December 21, 2019. The child is therefore now aged three and a half (3½) years old and is above the six (6) week age limit 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. 0384 dated November 13, 2020 declaring the child Free For Adoption. Accordingly, I am satisfied that 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 applicants are suitable adoptive parents.
9. The applicants are both Kenyan Citizens as evidenced by the annexed copies of their National Identity cards (Annexure ‘PEN-7’) They couple solemnized their union on October 20, 2012. They have annexed a copy of their marriage Certificate Serial No. 189877 (Annexure ‘PEN-8’)
10. The applicants have no biological child of their own. However they do have a daughter aged eight (8) years whom they adopted in the year 2017. Annexed to the summons is a copy of the relevant adoption order (Annexure ‘PEN-9’). The couple now wish to adopt another child in order to expand their family.
11. The applicants are both in gainful employment. The 1<sup>st</sup> Applicant runs a Real Estate business in Muranga County, whilst the 2<sup>nd</sup> applicant works as an Internal Auditor with World Vision. They have annexed copies of bank statements for accounts held at Absa Bank and at the Co-operative Bank (Annexure ‘PEN-10’). I find that the applicants are financially secure and are in a position to provide for the two (2) children.



12. The Christians are both Christians and intend to raise their child in the Christian faith. They were both examined by a doctor and were found to be both physically and mentally fit.
13. The applicants have annexed copies of clearance certificates issued to each of them by the Directorate of Criminal Investigations confirming that neither have a criminal record (Annexures 'PEN-12').
14. The applicants told the court that their extended family are aware of and support their intention to adopt the subject child. They have appointed the 2<sup>nd</sup> Applicants sister as the legal guardian for the child. The proposed legal guardian Priscah Mwai has signed a letter of consent dated November 9, 2020 confirming her willingness to be appointed as legal guardian.
15. All in all I am satisfied that the applicants are a suitable adoptive parents.
16. The subject child was born on December 21, 2019. The child was abandoned immediately after birth in Mlolongo, Phase 3. A Good Samaritan rescued the baby and rushed her to Shalom Hospital for medical attention. The abandonment was reported at Mlolongo, Police Station vide OB Number 30 of December 21, 2019.
17. On January 13, 2020 the Mavoko Childrens Court committed the child at Mahali Pa Maisha Childrens Home for care and Protection. Thereafter on June 6, 2021 the child was released into the custody of the Applicants under a Foster Care Agreement.
18. 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 ”
19. The subject child was abandoned at birth in the Mlolongo, area of Machakos County in the Republic of Kenya. The child is therefore presumed to be a Kenyan citizen by birth.
20. Efforts by police to trace the biological mother and/or relatives of the child have not been successful. To date no person has come forward to claim the child. A final police letter dated 24<sup>th</sup> June 2019 (Annexure 'YNM 13') is annexed to the summons.
21. 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) (a) of the Children Act 2022.
22. 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;” (own emphasis)
23. This is a child who was abandoned at birth. The child's biological mother was unable or unwilling to keep and care for the child. The child faced an uncertain future living in childrens homes and other similar institutions. This adoption allows the child the opportunity to be raised in a stable and loving home environment.
24. The child has lived with the applicants for a period of close to two (2) years. She has undoubtedly bonded with the applicants whom she now views as her parents. I was able to see the child online. She



was a neat and healthy toddler seated quietly next to the 2<sup>nd</sup> applicant. Like many children of her age the child was engrossed in the tablet she held in her hands.

25. A home visit was conducted on November 4, 2022. The applicants reside in a spacious five bedrooomed house in Maragua. The home has ample space and facilities for the child. The applicants have also employed a Nanny to assist in caring for their two (2) children. The home was found to be conducive environment for the 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. Finally, I am satisfied that this adoption does serve the best interest of the child. Accordingly, I allow this application and make the following orders:-
  1. The applicant P N M and E N M are authorized to adopt the child known as BABY C J alias CJ alias Baby D Bell alias Abandoned Infant Girl alias Abandoned Baby GirL.
  2. Upon adoption the child shall be known as Joanne Joy Wangu Ndung'u.
  3. The child is presumed to be a Kenyan citizen 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. Priscah Muthoni Mwai are appointed as the legal Guardians for the child.

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

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**MAUREEN A. ODERO**

**JUDGE**

