



**In re MMO (Child) (Adoption Cause E110 of 2022)
[2023] KEHC 1387 (KLR) (Family) (24 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 1387 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E110 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 MMO AKA MOO
(THE CHILD)**

IN THE MATTER OF

**AOO 1ST APPLICANT
YNM 2ND APPLICANT**

JUDGMENT

1. Before this court is the originating summons dated July 13, 2022 by which the applicants AOO and YNM seek the following orders:-

- “ 1. That the applicants be and are hereby authorized to adopt the child currently known as Baby MMO .
2. That if the adoption order is granted the said child is thereafter known as MOO .
3. That the child’s date of birth be declared to be July 4, 2021 and his place of birth to be declared to be Wadianga, Mbita/Suba Sub-County.
4. That the consent of the biological parents of the child be and is hereby dispensed with since the child was abandoned.



5. That CM and WO may be appointed the legal guardians of the child in the event of death of the applicants or incapacity of the applicants, rendering them un-available or incapable of taking care of the child.
 6. That the registrar general be directed to make the appropriate entries in the adopted children's register.”
2. The application was supported by the affidavit of even date sworn by the 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 in the year 2011. The couple have no biological child of their own. They now seek to adopt a child in order to complete their family.
 4. The applicants both confirm to the court that they understand the legal implications of an adoption order. They undertake to accord to the 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 July 4, 2021. The child is therefore now aged one and a half (1 ½) years and is 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 xxxx dated February 16, 2022 declaring the child free for adoption. 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. The applicants are both Kenyan Citizens as proved by the annexed copies of their National Identity cards (Annexures 'YNM 3 (a)' and 'YNM 3 (b)'). The couple solemnized their union on February 7, 2021. A copy of their marriage certificate serial no 47xxxx is annexed to the summons (Annexure 'YNM '4').
9. Despite having been in a marital union for several years the couple had no child of their own. They now seek to adopt the subject child in order to complete their family.
10. The applicants are both in gainful employment. The 1st applicant works for Nairobi [Particulars withheld] Company as a supervisor. The 2nd applicant is a Teacher employed with the Teachers Service Commission. They are financially stable and are in a position to provide for the needs of the child.
11. 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 May 5, 2021 (Annexure 'YNM6') written by Pastor Peter Kabaso Nyamwanda, of the SDA Church in Umoja II.



12. The applicants were each examined by a doctor and were both found to be physically and mentally fit. They have annexed copies of clearance certificates issued to them by the Directorate of Criminal Investigations proving That neither have a criminal record (Annexures ‘YNM5 a and ‘YNM 5b’).
13. The applicants told the court That their extended families are aware and support their intention to adopt the subject child. They have appointed the twin sister of the 2nd applicant and her husband as the legal guardians for the child. The two legal guardians CM and WO have signed a consent dated May 7, 2021 confirming their willingness to act as legal guardians for the child.
14. All in all I am satisfied That the applicants are a suitable adoptive parent.
15. The subject child is believed to have been born on or about July 4, 2021. The child was abandoned shortly after birth at [Particulars withheld] in Mbita Sub-County of Homa Bay County. Two women passing by rescued the baby and rushed him to Sindo Level 4 Hospital. The abandonment was reported at Sindo Police station vide OB Number 14 of July 5, 2021.
16. Thereafter Mbita Children’s Court committed to New Life Home Trust Kisumu for care and Protection. On April 5, 2022 the child was released into the custody of the applicants 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 That eight (8) 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 the age of two (2) days in Homa bay County within the Republic of Kenya. The child is therefore presumed to be a citizen of Kenya by birth.
19. Efforts by police to trace the biological mother have been unsuccessful. To date no person has come forward to claim the child. A final police letter dated July 8, 2021 is annexed to the summons (Annexture ‘YNM 13’).
20. 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](#).
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. This is a child who was abandoned shortly after his birth. He faced an uncertain future living in children’s homes and other similar institutions. The child has lived with the applicants for a period of close of one (1) year. He was has undoubtedly bonded with the applicants whom he views as his parents.
23. I was able to see the child online. He was a healthy child, neatly dressed sleeping peacefully in the arms of the 2nd applicant.



24. A Home visit was conducted on December 5, 2022. The applicants reside in a two bedroomed house in [Particulars withheld]Estate. The home was found to have adequate space and facilities for raising a young child. The home also had a playing area where the child could play with his friends.
25. 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.
26. 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 AOO and YNM are authorized to adopt the child known as BABY MMO .
 2. Upon adoption the child shall be known as MOO .
 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. CM and WO are appointed as the legal Guardians for the child.

DATED IN NAIROBI THIS 24TH DAY OF FEBRUARY, 2023 .

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MAUREEN A. ODERO

JUDGE

