



REPUBLIC OF KENYA



KENYA LAW
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**In re NH (Child) (Adoption Cause E132 of 2022)
[2023] KEHC 3624 (KLR) (Family) (31 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 3624 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E132 OF 2022
MA ODERO, J
MARCH 31, 2023
IN THE MATTER OF CHILDREN'S ACT NO 8 OF 2001
AND
IN THE MATTER OF ADOPTION OF BABY NH (THE CHILD)
BY**

IN THE MATTER OF

**MNK 1ST APPLICANT
RWG 2ND APPLICANT**

JUDGMENT

1. Before this court is the originating summons dated August 3, 2022 by which the Applicants MNK and RWG seek the following orders:-
 1. That the Applicants be authorized to adopt baby NH, a minor who is to be known as EMN and the Registrar General be directed to enter this adoption into the Register of Adoptions.
 2. That MAMG be appointed as the Legal guardian of the child.
 3. That the child be presumed to be born in Kenya.
2. The application was supported by the statement of even date sworn by both 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 November 2016. Their union has not been blessed with any child hence their desire to adopt a child.



4. The Applicants both 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 the application for adoption, the evidence adduced in support thereof as well as the various reports filed in court.
6. The prerequisites for before an adoption order can be made are set out in section 184 (1) (a) and (b) of the *Children's Act* 2022: -
 - “(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.”
7. The subject child is believed to have been born on December 26, 2019. He is therefore now aged four and half (4 ½) years old and is above the six (6) week age limit provided for in law.
8. Buckner Kenya Adoption Services which is a registered adoption agency have annexed to their report the original copy of their certificate Serial Number 0504 dated July 14, 2021 declaring the child Free For Adoption. I am satisfied that the legal prerequisites for an adoption order have been made.
9. 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 Kenya citizens as proved by the annexed copies of their National Identity Cards. (Pages 1-2 of the summons)
10. The Applicants are a couple who solemnized their union at the St. Bernadette Catholic Church in Kiambu County on 12th November 2016. A copy of their marriage certificate Serial Number 134933 is annexed to the summons.
11. The couple have no biological child of their own. It is reported that they have suffered five (5) miscarriages and have therefore opted for adoption as way to fulfil their desire to have a child of their own.
12. The Applicants are both in gainful employment. The 1st Applicant works as an electrical engineer at [Particulars Withheld] whilst the 2nd Applicant is employed by the [Particulars Withheld]. The 2nd Applicant has annexed copies of her payslip as proof of her employment (pages 31-33 of the summons)
13. The Applicants also run an animal feeds business in Juja Town. They have annexed copies of their M-Pesa statement (Pages 26-30). Together they realise a joint monthly income of approximately Kshs.130,000/=. I find that the Applicants are financially stable and are capable of providing for the needs of the child.
14. The Applicants are committed Christians and intend to raise the child in the Christian faith. They have annexed a letter of recommendation dated 24th February 2021 written by Father Tomy Elias of St. Theresa's Catholic Parish Kalimoni where they are active members.
15. The Applicants were both examined by a doctor and were found to be mentally and physically fit. They have annexed copies of clearance certificates issued to them by the Directorate of Criminal Investigations proving that neither has a criminal record (Pages 34-35).



16. The Applicants told the court that their respective families are aware of and support their intention to adopt the subject child. They have appointed the 2nd Applicant's younger sister as the legal guardian for the child. The proposed legal Guardian MAMG has signed a consent dated 2nd August 2022 indicating her willingness to act as the legal guardian for the child.
17. All in all I am satisfied that the Applicants are suitable adoptive parents.
18. The subject child is a boy child who was abandoned at the age of one (1) week in a grassy field near Pima Gas in Githururai 45 on January 2, 2020. A good Samaritan rescued the baby and reported the abandonment at Githurai Kimbo Police Station vide OB Number 59 of 2nd January 2020. Thereafter on January 21, 2020 the Ruiru Childrens Court committed the child to Care of Hope Babies Home for Care and Protection and on November 19, 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: -

“(4) 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 by Birth.”
20. The subject child was found abandoned at the age of one (1) week in Ruiru Sub-County Kiambu County within the Republic of Kenya. He is therefore presumed to be a citizen of Kenya by birth.
21. Efforts by police to trace the biological mother/relative of the child have not been successful. To date no person has come forward to claim the child. A final police letter dated 24th September 2020 is annexed to the summons.
22. Given the fact of the child's 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) (as) of the Children 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). (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)
24. This is a child who was abandoned shortly after his birth. He faced an uncertain future living in children's homes and other such 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 in their home since November 2021. He has undoubtedly bonded with the family. I was able to see the child online. He was a cheerful toddler who was at ease in the company of the Applicants and was able to answer basic questions about himself.
26. A home visit was conducted by the Children's Officer. The Applicants reside in their own three roomed house in Juja South Estate. The home was found to be in a secure neighbourhood and was spacious and well furnished. The Applicants have 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 Children's Services. All three reports were positive and all recommend the adoption.
28. Finally I am satisfied that this adoption does serve the best interests of the subject child. Accordingly I allow the application and make the following orders:-
 1. The Applicants MNK and RWG are authorized to adopt the child known as BABY NH.
 2. Upon adoption the child will be known as EMN.
 3. The child is presumed to be a citizen of Kenya by birth.
 4. The Registrar –General is directed to make the relevant entry in the Adopted Children's Register.
 5. MAMG is appointed as the legal Guardian for the child.

Dated in Nairobi this 31st day of March 2023.

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MAUREEN A. ODERO

JUDGE

