



REPUBLIC OF KENYA



**In re Baby MWN aka Baby F (Child) (Adoption Cause E137 of 2021)  
[2023] KEHC 3894 (KLR) (Family) (24 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 3894 (KLR)

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

**FAMILY**

**ADOPTION CAUSE E137 OF 2021**

**MA ODERO, J**

**MARCH 24, 2023**

**IN THE MATTER OF CHILDREN'S ACT NO 8 OF 2001**

**AND**

**IN THE MATTER OF ADOPTION OF BABY MWN AKA BABY F (THE CHILD)**

**IN THE MATTER OF**

**NM ..... 1<sup>ST</sup> APPLICANT**

**ENG ..... 2<sup>ND</sup> APPLICANT**

**JUDGMENT**

1. Before the court is the originating summons dated October 25, 2021 by which the Applicants NM and ENG seek the following orders:-
  - “ 1. That the consent of the biological parent of Baby MWN aka Baby F be and is hereby dispensed with since the infant was abandoned by her biological mother.
  2. That the Applicant be and is hereby authorized to adopt Baby MW aka Baby F and the child be called FMN henceforth.
  3. That the Registrar-General do make the appropriate entries in the Adopted Children's Register in respect of Baby MWN aka Baby F.
  4. That the court does issue such other orders as may be necessary in the best interest of the child.
2. The application was supported by the statement of even date sworn by the two Applicants. The matter was canvassed by way of vive voce evidence on the virtual platform.



3. The Applicants are a couple who solemnized their marriage in the year 2001.
4. The couple have one (1) child a daughter who is aged twenty-five (25) years old. They now wish to adopt the subject child in order to expand their family.
5. The Applicants confirm that they both 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**

6. I have considered this application for adoption, the evidence adduced in support thereof as well as the various reports filed in court.
7. 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.”
8. The subject child is a boy-child who was born on November 21, 2014 at the Thika Level 5 Hospital. Accordingly the child is now aged Eight and a half (8 ½ ) years old and is well above the six (6) week age limit provided for in law.
9. KKPI which is a registered Adoption Agency have annexed to their report a copy of their certificate Serial Number XXX dated June 12, 2020 declaring the child free for adoption. In the circumstances I am satisfied that all the legal prerequisites for an adoption order have been met.
10. The Applicants are both Kenyan citizens as proved by the annexed copies of their National Identity Cards (Exhibit 10). The Applicants are a married couple who solemnized their union on June 28, 2001 at the office of the District Registrar in Kajiado. A copy of their Marriage Certificate Serial Number 8xxxx2 is annexed to the summons (Exhibit 8). Their union was blessed with one (1) child a daughter who is now an adult.
11. The Applicants are both in gainful employment. The 1<sup>st</sup> Applicant works for the Kenya Power & Lighting Company, whilst the 2<sup>nd</sup> Applicant is a teacher employed by the Teachers Service Commission. They have each annexed copies of their respective payslips as proof of their employment. (exhibit 12 (c) and (d))
12. The Applicants have also annexed copies of Bank statements for an account held at ABSA Bank (Exhibit 12 (a) and 12 (b)). Together the Applicants realise a joint income of approximately Kshs.150,000/= which is sufficient to enable them provide for the needs of the child.
13. The Applicants are both Christians and intend to raise the child in the Christian faith. They were each examined by a doctor and were both found to be mentally and physically fit. The Applicants have also annexed copies of clearance certificates issued to them by the Directorate of Criminal Services confirming that neither has a criminal record.
14. The Applicants told the court that their extended family are aware of and support their intention to adopt the subject child. Their adult daughter SMN testified in court and confirmed that she was



- aware of and supported her parents intention to adopt the child. The Applicants have appointed their daughter as the legal guardian for the child. The proposed legal Guardian SM has signed a letter of consent dated June 16, 2019.
15. All in all I am satisfied that the Applicants are suitable adoptive parents.
  16. The subject child was born on November 21, 2014 at the Thika Level 5 Hospital. The child's biological mother whose name was given as Mercy Wangari absconded from the hospital on November 24, 2014 leaving her baby in the New born Unit. The mother never returned to collect the child.
  17. The abandonment of the child was reported at Thika Police Station vide OB Number 54 of February 4, 2015. Thereafter on February 18, 2015 the Thika Children's Court committed the child to Mogra Rescue Center for Care and Protection. On January 22, 2020 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: -
    - "(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."
  19. The subject child having been born in a hospital within the Republic of Kenya is declared to be a Kenyan citizen by birth.
  20. Efforts made to trace the biological mother/relatives of the child have borne no fruit. To date no person has come forward to claim the child. A final police letter dated September 21, 2015 is annexed to the summons.
  21. 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) (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 two (2) days after his birth. The child's mother was unable or unwilling to take care her baby. The child faced an uncertain future living in various children's homes and other similar institutions. This adoption allows the subject child the opportunity to be raised in a loving and stable home environment.
  24. The child has lived with the Applicants in their home since January 2020. He has undoubtedly bonded with the Applicants. This is the only family the child knows. I was able to see the child online. He was a healthy, cheerful boy who readily answered questions put to him by the court. The Applicants adult daughter indicated that she consents to the adoption and has already welcomed the child into the family.



25. 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.
26. In conclusion I am satisfied that this adoption does serve the best interest of the subject child. I Therefore allow this application and make the following orders:-
  1. The Applicants NM and ENG are authorized to adopt the child known as Baby MWN aka Baby F.
  2. Upon adoption the child will be known as FMN.
  3. The child is declared 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. SMN is appointed as the legal Guardian for the child.

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

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**MAUREEN A. ODERO**

**JUDGE**

