



**In re E aka JNM (Baby) (Adoption Cause E159 of 2021)
[2023] KEHC 3623 (KLR) (Family) (24 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 3623 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E159 OF 2021
MA ODERO, J
MARCH 24, 2023**

IN THE MATTER OF

MMM 1ST APPLICANT

JMM 2ND APPLICANT

JUDGMENT

1. Before this court is the Originating Summons dated November 16, 2021 by which the Applicants MM and JMM seek the following orders:-

“ 1. That the consent of the biological parents of Baby E be and is hereby dispensed with since the infant was abandoned by her biological mother.

2. That the Applicant be is hereby authorized to adopt Baby E and the child be called JNM henceforth.

3. That the Director-General be and is hereby authorized to adopt Baby Elliott and the child be called John Nyanzi Mutungi henceforth.

4. That RAM and CNM be appointed the legal guardian of the minor.

5. 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 Applicant. 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 August 2021. The couple bore two (2) children together but unfortunately, both children died in their infancy. They now wish to adopt the subject child in order to complete their family.



4. The Applicants each confirm that they understand the legal implications of an adoption order. They both 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 carefully considered this application for adoption, the evidence adduced in support thereof as well as the various reports in court. 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 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 October 3, 2016. Therefore the child is now aged six (6) years old and is above the six (6) weeks age limit provided for in the law.
7. KKPI Adoption Society which is a registered adoption agency, have annexed to their report a copy of their Certificate Serial No. XXXX dated July 25, 2018 declaring the child free for adoption. I therefore find that all 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 evidenced by a copy of his National Identity card for 2nd Applicant and Passport for 1st Applicant annexed to the summons (Exhibit 10).
9. The Applicants are a married couple. They solemnized their union on August 4, 2021 at the Nairobi Baptist Church. A copy of the Marriage Certificate Serial Number XXXX is annexed to the summons (Exhibit 8). The Applicants bore two (2) children both of whom unfortunately died in infancy. They have decided to adopt in order to complete their family. They have decided to opt for adoption as a means to expand their family.
10. The Applicants are both in gainful employment. The 1st Applicant works as a Chief Executive Officer of an NGO known as “I Choose Life Africa”. He has annexed copies of his payslip to the summons (Exhibit 15).
11. The 2nd Applicant works as a teacher at the French School in Nairobi. She has annexed copies of her payslips as proof of employment. A copy of bank statements from NCBA is annexed to the summons (Exhibit ‘19’). I am satisfied that the Applicant is financially stable and is well able to provide for the needs of the child.
12. The Applicants are both Christians and intend to raise the child in the Christian faith. They have annexed copies of clearance certificates issued to each by the Directorate of Criminal Investigations confirming that neither Applicant has a criminal record.
13. The Applicants told the court that their respective families are aware of and support their intention to adopt the child. They have appointed the sister of the 2nd Applicant and her husband as the legal



guardians for the child. The proposed legal guardians RAM and CNM have both signed a consent dated August 1, 2017 indicating their willingness to act as legal Guardians for the child. All in all, I am satisfied that the Applicants suitable adoptive parents.

14. The subject child is believed to have been born on October 3, 2016. On May 2, 2017 when the child was about seven (7) months old, the mother left the baby with a young girl at the Mathare North County Hospital. The mother pretended that she was going to relieve herself and never returned to get the child. The abandonment was reported at Ruaraka Police Camp vide OB Number XX of May 2, 2017.
15. Thereafter on June 14, 2017 the Nairobi Children's Court committed the child to Happy Life Children's Home for care and protection. In August 2018, the child was released into the custody of the Applicant under the Foster Care Agreement.
16. 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”
17. This is a child who was abandoned at the age of seven (7) months at a hospital in Mathare Nairobi County in the Republic of Kenya. The child is therefore presumed to be a Kenyan citizen by birth.
18. 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)
19. Efforts by police to trace the biological mother of the child have been unsuccessful. To date no person has come forward to claim the child. The final police letter dated March 22, 2018 is annexed to the summons (Exhibit '5').
20. Given the fact of his abandonment there exists no 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) of the [Children's Act 2022](#).
21. This is a child was abandoned at seven (7) months. He faced an uncertain future living in Childrens Homes and such other similar institutions. This adoption allows the child the opportunity to be raised in a loving and stable home environment.
22. The child has lived with the Applicants in their home since August 2018. They have enrolled him in school. The child has 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 smiling at the camera. The child was able to answer basic questions about himself. He was obviously a child who was being cared for well.
23. A home visit was conducted on November 28, 2022. The Applicants reside in a four bedroomed house in a gated community along Mucai Drive. The home was found to be spacious and suitable for raising a young child. The home is close to various social amenities like schools, hospitals churches, shopping malls etc.
24. I have carefully perused the reports prepared by the Guardian Ad Litem, the Adoption Agency and the Director Children Services. All three reports are positive and recommend the adoption.



25. Finally, I am satisfied that this adoption will serve the best interests of the child. I therefore allow this application and make the following orders:-

1. The Applicants Michael Mutungi and Jospephine Muthoni Mutungi are authorized to adopt the child known as Baby E.
2. Upon adoption, the child will be known as JNM.
3. The child is presumed to be a Kenyan Citizen by birth and entitled to all the rights and privileges thereto.
4. The Registrar General is directed to make relevant entry in the Adopted Children's Register.
5. RAM and CNM are appointed as legal guardians for the child.

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

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MAUREEN A. ODERO

JUDGE

