



**In re MG (Child) (Adoption Cause E044 of 2021)
[2023] KEHC 3622 (KLR) (Family) (24 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 3622 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E044 OF 2021
MA ODERO, J
MARCH 24, 2023
N THE MATTER OF CHILDREN’S ACT NO 8 OF 2001
AND
IN THE MATTER OF ADOPTION OF BABY MG (THE CHILD)**

IN THE MATTER OF

GKC 1ST APPLICANT

GNK 2ND APPLICANT

JUDGMENT

1. Before this court is the originating summons dated May 11, 2021 by which the Applicants GCK and GNK seek the following orders:-
 1. That the consent of the biological parents of Baby MG be and is hereby dispensed with since the infant was abandoned by her biological mother.
 2. That the Applicants be and are hereby authorized to adopt Baby MG and the child be called JGNC henceforth.
 3. That the Registrar-General do make the appropriate entries in the Adopted Children’s Register in respect of Baby MG .
 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 affidavit 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 in the year 2009. The couple has no biological children of their own. They do however have an Eight (8) year old daughter whom they adopted in the year 2016. The Applicants now wish to expand their family by adopting another child.
4. The Applicants both confirm that they understand the legal implications of an adoption order. They both undertake to accord to the subject child all the rights due to a biological child including the right of inheritance.

Analysis and Determination

5. I have carefully considered this application for adoption the evidence adduced in support thereof as well as the various reports filed in court. The prerequisites before an adoption order can be made are set out in section 184 (1) (a) and (b) of the *Children 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.”
6. The subject child is believed to have been born on March 28, 2019. Therefore the child is now aged four (4) years old and is above the six (6) week age limit provided for by law.
7. KKPI a registered Adoption Agency have annexed to their report a copy of their certificate Serial Number xxxx dated November 15, 2019 declaring the child Free For Adoption. I am satisfied 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 proved by the annexed copies of their National Identity Cards. (Exhibit 9)
9. The Applicants are a couple who got married to each other under Kikuyu customary law in the year 2009. They later solemnized their union on June 25, 2001 as proved by the annexed copy of the Marriage Certificate Serial No. xxxx.
10. The couple have no biological children of their own. They do however have an Eight (8) year old daughter whom they adopted in the year 2016. They now wish to adopt another child in order to expand their family.
11. The Applicants are both gainfully employed. The first Applicant is an Accountant by profession and is currently employed by a company known as [Particulars withheld]. He has annexed copies of his payslips as proof of employment (Exhibit II).
12. The second Applicant is a hairstylist by profession and works for [Particulars withheld]. The couple together realise a monthly income of approximately Kshs 100,000 which is sufficient to enable them provide for the needs of their children. The couple have annexed copies of bank statements for an account held at Equity Bank (Exhibit 10). I am satisfied that the Applicants are financially stable.
13. The Applicants are both Christians and intend to raise the child in the Christian faith. They were both examined by a doctor and were each found to be mentally and physically fit.
14. The Applicants have annexed to the summons copies of clearance Certificates issued to them by the Director Criminal Investigations proving that neither has a criminal record.



15. The Applicants stated that their extended family are aware of and support their intention to adopt the subject child. They have appointed the sister of 2nd Applicant as the legal guardian for the child. The proposed legal guardian GWM has signed a consent dated April 16, 2019. The same legal Guardian has also signed an Affidavit of consent dated May 11, 2020 confirming her willingness to act as the legal guardian for the child.
16. All in all I am satisfied that the applicants are suitable adoptive parents.
17. The subject child is a boy child who is believed to have been born on March 28, 2019. On March 30, 2019 the child was found abandoned in a shamba in [Particulars withheld] Location of Murang'a County.
17. A good Samaritan rescued the baby and reported the matter at Makuyu Police Station vide OB Number XXX of March 30, 2019. The baby who was under weight was rushed to Kenol Sub-County Hospital for medical attention.
18. Thereafter on July 3, 2019 the Kigumo Children's Court committed the child to New Life Home Trust for Care and Protection. On February 23, 2020 the child was placed 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 two (2) days old in Murang'a County within the Republic of Kenya. The child is therefore presumed to be a citizen of Kenya by birth.
21. Efforts to trace the biological mother of the child have borne no fruit. To date no person has come forward to claim the child. A final Police letter dated November 14, 2019 is annexed to the summons (Exhibit 6).
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) (a) 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). 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)
24. This is a child who was abandoned a few days after his birth. He faced an uncertain future living in children's homes and other similar institutions. This adoption provides the child with the opportunity to be raised in a loving and stable home environment.
25. The child has lived with the Applicants in their home for the past three (3) years. 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 was obviously comfortable sitting on the lap of the second Applicant.

26. A Home visit was conducted by the Children's Department. The Applicants reside in their own home at Gikambura in Dagoretti. The home is a three bed-roomed house within a secure compound surrounded by a perimeter fence. The Applicants carry out poultry farming in their home and have a large compound with amenities like electricity and water. The Applicants have also 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. I note that the Applicants are not new to adoption as they have previously adopted a daughter.
28. Finally I find that this adoption serves the best interest of the subject child. I therefore allow this application and make the following orders:-
 - (1) The Applicants GCK and GNK are authorized to adopt the child known as BABY MG .
 - (2) Upon adoption the child will be known as JGNC .
 - (3) The child is presumed to be a Kenyan citizen by birth.
 - (4) The Registrar-General is directed to make the relevant entry in the Adopted Children's Register.
 - (5) GWM is appointed as the legal Guardian for the child.

DATED IN NAIROBI THIS 24TH DAY OF MARCH 2023.

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MAUREEN A. ODERO

JUDGE

