



**In re Adoption of TN (Child) (Adoption Cause E165 of 2021)  
[2023] KEHC 17372 (KLR) (Family) (28 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 17372 (KLR)

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

**FAMILY**

**ADOPTION CAUSE E165 OF 2021**

**MA ODERO, J**

**APRIL 28, 2023**

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

**AND**

**IN THE MATTER OF ADOPTION OF BABY TN ALIAS MA  
ALIAS MA ALIAS ABDANDONED BABY GIRL (THE CHILD)**

**IN THE MATTER OF**

**MIL ..... APPLICANT**

**AND**

**PKN ..... APPELLANT**

**JUDGMENT**

1. Before this court is the Amended Originating Summons dated October 5, 2022 by which the Applicants MIL and PKN seek the following orders.

- “ 1. That spent.
- 2. That spent.
- 3. That the Applicants be authorized to adopt MA alias Abandoned Baby M alias M alias Unknown African Child alias Unknown African Female Baby to be known as JAI.
- 4. That the child be presumed a Kenyan Citizen by birth.
- 5. That child’s date of birth be July 21, 2016 and the place of birth be Nakuru.



6. That the Registrar General be directed to enter the adoption in the Adopted Children Register.
7. That the Director Immigration be authorized to issue the child with a Kenyan Passport.
8. That the 1<sup>st</sup> Applicant's sister, LIE and her husband RBOO be appointed the legal guardians of the child in event of the death or incapacity of the Applicants before the child is of age or independent.
9. That the Court be pleased to make any further orders it deems necessary.

Which Application is brought on the grounds that the orders sought are in the best interest of the child, further grounds set out in the annexed statement dated October 5, 2022 and Affidavit of the Applicants herein dated October 5, 2022 and the annexures thereto and on other and further grounds to be adduced at the hearing hereof.

2. The Summons 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 married couple who have a twelve (12) year old son together. They now wish to adopt a child in order to expand their family and out of their desire to provide a needy child with a home.
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.

#### **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 July 21, 2016. She is now aged six and a half (6½) years old and is above the six (6) weeks age limit provided for by law.
8. Little Angels Network which is a registered adoption society have annexed to their report the original copy of the Certificate Serial Number xxxx dated March 9, 2018 declaring the child Free for Adoption. I find that all the legal prerequisites for adoption have been met.
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 Kenyan Citizens as evidenced by the annexed copies of their National Identity cards (Annexure ‘MPL – 7’).



10. The Applicants are a couple who have been married for over Fifteen (15) years. The couple got married on November 4, 2006 at the Mombasa [Particulars withheld] Church. Annexed to the Summons is a copy of their marriage Certificate Serial Number xxxx (Annexture ‘MPL – 10’).
11. The Applicants have one (1) biological child – a son who is now aged twelve (12) years old. They have decided to adopt a child in order to expand their family.
12. The Applicants are both gainfully employed. The 1<sup>st</sup> Applicant who is an electrical technician runs a business known as [Particulars Withheld] the 2<sup>nd</sup> Applicant who is a trained nurse is employed by [particulars withheld]. Together the Applicants realize a monthly income of approximately Kshs 300,000/= .
13. The Applicants have annexed copies of Bank Statements for an account held at Co-operative Bank (Annexture ‘MPL – 11’). I am satisfied that the Applicants are financially stable and are in a position to provide for the needs of the child.
14. The Applicants are both Christians and intend to raise the child in the Christian faith. They were examined by a doctor and both were found to be both mentally and physically fit.
15. The Applicants have annexed clearance certificates issued to them by the Directorate of Criminal Investigations (Annexture ‘MPL – 13’) proving that neither have a criminal record.
16. The Applicants stated that their respective families are aware of and support their intention to adopt the subject child. They have appointed the sister and brother in-law of the 1<sup>st</sup> Applicants as the legal guardians for the child.
17. The proposed legal guardians LIE and ROO have both sworn an Affidavit of consent dated October 25, 2021 confirming their willingness to act as the legal guardians for the child.
18. All in all, I am satisfied that the Applicants are suitable adoptive parents.
19. The subject child is a girl child who is believed to have been born on July 21, 2016. The child was found abandoned on August 3, 2016 near a church at the Maili Sita, area of Nakuru County. The baby was rescued and rushed to Nakuru Provincial General Hospital for medical attention.
20. The abandonment of the child was reported at Nakuru Police Station vide OB Number xx of August 5, 2016. Thereafter on August 10, 2016 the Nakuru Children’s Court committed the child to the African Gospel Church Baby Centre for care and protection. On July 14, 2017 the child was released into the custody of the Applicants under a Foster Care Agreement
21. 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.”
22. The subject child was found abandoned at the age of one (1) week old in Nakuru County within the Republic of Kenya. She is therefore presumed to be a citizen of Kenya by birth.
23. Efforts to trace the biological mother/relatives of the child have borne no fruit as to date no person has come forward to claim the child. A final police letter dated May 12, 2017 is annexed to the summons (Annexture ‘MPL – 6’).



24. Given the fact of her abandonment there exists no known person from whom consent for this adoption can be sought and/or obtained. In the circumstances, I waive the requirement for consent in line with Section 187 (1) (a) of the Children Act, 2022.

25. 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)

26. This is a child who was abandoned barely one (1) week after her birth. She faced an uncertain future living in Children Home and other similar Institutions. The adoption allows the child the opportunity to be raised in a loving and stable home environment.

27. The child has lived with the Applicants in their home since July, 2017. She has undoubtedly bonded with the Applicants and their son. That is the only family the child knows. I was able to see the child online. she was a health, talkative little girl who confidently answered questions put to her by the court. She was obviously very comfortable in the company of the Applicants.

28. A home visit was conducted on July 20, 2022. The Applicants reside in a rented two bed-roomed house in [Particulars withheld] Estate in Kibera. The home was found to be well furnished with adequate facilities for the child. There are several social amenities like schools, churches, hospital and shops nearby. The Children’s Officer observed that the child has bonded well with the Applicants and their son whom she views as her brother. The Applicants have also employed a Nanny to assist in caring for the child.

29. 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 recommended the adoption.

30. Finally, I am satisfied that the adoption will serve the best interest of the subject child. Accordingly, I allow this application and make the following orders:-

1. The Applicants MIL and PKKN are authorized to adopt the child known as MA alias Abandoned Baby Girl alias Baby M alias Unknown African Child alias Unknown African Female Baby.
2. Upon adoption the child will be known as JAI.
3. The child is presumed to be a citizen of Kenya by birth and is entitled to all the rights and privileges thereto.
4. The Registrar – General is directed to make the relevant entry in the Adopted Children’s Register.
5. LIE and RBOO are appointed as the legal guardians for the child.

**DATED IN NAIROBI THIS 28<sup>TH</sup> DAY OF APRIL, 2023.**

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**MAUREEN A. ODERO**  
**JUDGE**

