



REPUBLIC OF KENYA



**In re Baby LN aKa ML aka M (Child) (Adoption Cause E239 of 2022)
[2023] KEHC 18697 (KLR) (Family) (28 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 18697 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E239 OF 2022
PM NYAUNDI, J
APRIL 28, 2023
IN THE MATTER OF THE CHILDREN'S ACT NO. 29 OF 2022
IN THE MATTER OF ADOPTION OF BABY LN A.K.A. MK (THE CHILD)
AND
IN THE MATTER OF AN APPLICATION FOR ADOPTION
BY CLAI AND CILA**

JUDGMENT

1. Before the Court is the Originating Summons dated December 8, 2022 by which the Applicants seek the following orders:
 1. That the Applicants be authorised to adopt the Child; BABY LN AKA ML AKA M who is a Kenyan citizen born on the February 26, 2018.
 2. That upon adoption the Child be known as TAI.
 3. That BOA and ETAO of Kenya National Identity Cards Number xxxx and xxxx be appointed as the legal guardian of the child BABY LN AKA ML AKA M
 4. That the Registrar General be directed to enter this adoption into the Register of Adoptions and a subsequent birth certificate issue by the Registrar of births and Deaths
2. The Application was supported by the statements of even date made by the Applicants. The matter was canvassed by way of *Viva Voce* evidence on the virtual platform.
3. The applicants are husband and wife since 2009. They reside in [particulars Withheld] in Nairobi. The motivation to adopt the child is that they would like to have a child and they are unable to have their own biological children. They have had custody of the child since February 18 2020.



4. Both Applicants testified in Court. They have the financial means to provide for the needs of the child. The Child is currently at [particulars Withheld] Academy.
5. The court had the opportunity to interview the minor and was able to observe that the child appeared to be happy and identifies the Applicants as his parents.
6. A representative from the Child Welfare Society was present in Court and confirmed that they issued a certificate serial no xxxx dated November 19, 2019 declaring the Child free for adoption.
7. The Child Welfare Society also submitted two reports both dated May 24, 2022, the first confirming that the biological mother of the child voluntarily surrendered him for adoption and the second being an assessment of the suitability of the Applicants to adopt the minor. The reports confirmed the child free for adoption and positively recommended the Applicants to adopt the minor. The Court has seen the consent dated August 1, 2019, signed by the biological mother surrendering the child for adoption.
8. Also presented to court was report dated February 20, 2023 by the Department of Children’s Services prepared by EK recommending the Applicants as they have met the requirements for local adoption as provided for under the Children Act.
9. The Guardian Ad Litem, CWM presented her report dated March 1, 2023, in which she confirmed that she conducted home visits and recommend he adoption of the Baby by the Applicants.
10. The proposed Legal guardian ETA was present in Court. She is the sister to the 1st Applicant and Sister-in-law to the 2nd Applicant. BOA is her husband. As a couple they are prepared to be appointed as legal guardians to the minor. They understand what the role entails and are prepared to assume parental responsibility if for any reason the Applicants are unable to discharge their role as adoptive parents.
11. After carefully assessing the records herein, I am satisfied that the applicants have fulfilled all the legal requirements relating to the Child’s adoption. Section 186 of the [Children Act, 2022](#) provides;
 - (1) The Court may make an adoption order on application by—
 - (a) a sole applicant; or
 - (b) two spouses jointly.
 - (2) The Court shall not make an adoption order in any case unless—
 - (a) the applicant has attained the age of twenty-five years, but is not above the age of sixty-five years; and
 - (b) the applicant, or both of the applicants in a joint application, is more than twenty-one years older than the child.
 - (3) The restrictions in subsection (2) shall not apply in any case where a sole applicant or one of the joint applicants is the mother, father or relative of the child.
12. The Applicants are aged 44 and 45 respectively.
13. Article 53 of the [Constitution of Kenya, 2010](#) provides the overarching principles which must apply whenever any decision concerning a child is to be considered. It states:

A Child’s Best interests are of paramount importance in every matter concerning the child
14. This principle is restated in Under Section 8 of the [Children Act, 2022](#) which provides Best interests of the child.



- (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;TA
- (b) the best interests of the child shall include, but shall not be limited to the considerations set out in the First Schedule.TA

Section 194 (1) (c) of the [Children Act, 2022](#) also requires that if the adoption order is made

the order will be in the best interests of the child, having regard to the wishes of the child, depending on the child's age and understanding, and to the ability of the applicant to maintain and educate the child;TA

In view of the foregoing the court is of the considered view that it is in the child's best interest to be adopted by the Applicants. Accordingly, I allow the prayers sought in the Originating Summons dated August 16, 2022 and order as follows:

1. That the Applicants TIA and CLAI be authorised to adopt the Child; T LN AKA ML AKA MTA
2. The Child is deemed to be a Kenyan citizen born on February 26, 2018.
3. That the Child be known as TAI
4. That BOA and ETAO are appointed as the legal guardian of the child T LN AKA ML AKA MTA now known TAI
5. That the Registrar to enter this adoption into the Register of Adoptions and a subsequent birth certificate to issue by the Registrar of births and Deaths
6. The Guardian Ad Litem is hereby discharged.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 28TH DAY OF APRIL, 2023.

P M NYAUNDI

HIGH COURT

JUDGE

In the presence of;

Ms. Githogori Advocates for the Applicant

