



**In re MK aka M (Baby) (Adoption Cause E009 of 2023)
[2023] KEHC 18362 (KLR) (Family) (28 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 18362 (KLR)

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

FAMILY

ADOPTION CAUSE E009 OF 2023

PM NYAUNDI, J

APRIL 28, 2023

**IN THE MATTER OF THE CHILDREN'S ACT NO.29 OF
2022**

IN THE MATTER OF BABY MK AKA

M

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION

BY

IN THE MATTER OF

RWN APPLICANT

JUDGMENT

1. Before the court is the originating summons dated January 17, 2023 by which the applicant seeks the following orders:
 1. That the applicant RWN be allowed to adopt the child currently identified as Baby MK a.k.a M
 2. That henceforth the child be renamed as ACN
 3. That the Child's date and place of birth be declared to be July 28, 2019 in Nairobi County
 4. That the Child be presumed to be a Kenyan Citizen by birth and consequently entitled to all the rights and benefits in respect thereof
 5. That GNN and DNK be appointed as Legal Guardians of the child, in the event that the applicant herein is incapacitated or in any way unable to discharge her parental obligations



6. That the guardian ad Litem be discharged
 7. That the Registrar General be directed to make the appropriate entries in the Adopted Children's Register
 8. That this court do issue such further orders as are in the interest of justice.
2. The Application was supported by the statement of even date made by the applicant. The matter was canvassed by way of Viva Voce evidence on the virtual platform.
 3. The applicant is desirous of adopting of the minor child, subject of these proceedings. She is a nurse at the [Particulars Withheld] and therefore has the financial means to provide for the needs of the Child. She has had custody of the Child since July 2022. She is single. The Child is currently attending school at [Particulars Withheld] Academy in Nairobi. The currently is about 3 years and 8 months.
 4. The minor is estimated to have been born on July 28, 2019. According to report made at Kenyatta Police post vide OB. NO 36/28/2/2020, the child was abandoned at Kenyatta National Hospital Casualty area after his mother absconded. Notwithstanding investigations the parents have not been traced and nobody has come forward to claim the child.
 5. The matter was reported to the Children's office Provincial Headquarters which referred the Child to Imani Children's Home in June 2021. Upon discharge from Kenyatta National Hospital the Child was admitted into Imani Children's Home on July 5, 2021, where he was named MK.
 6. The Children's Court at Nairobi issued committal orders on January 7, 2022 vide Protection & Care Case Number E683 of 2021 committing the Child to the Home for 3 years.
 7. Prior to the hearing of the adoption application, Change Trust prepared and filed a report and issued a certificate serial No. 0525 dated April 28, 2022 declaring the child free for adoption. The court appointed Guardian Ad litem, LWK.
 8. At the hearing the Guardian Ad Litem presented her report dated February 27, 2023 recommending the adoption, having observed that the Baby has bonded well with the applicant and her family.
 9. An officer the Department of Children Services, Ezekiel Kimani conducted home visits and prepared a report dated March 2, 2023. The report established that the minor was abandoned at Kenyatta National Hospital, and no one has come forward to claim the child. The minor was placed with the applicant in July 2022. The Report recommends the adoption.
 10. The proposed Legal Guardians, GNN and DNK both testified in court. They are married. The applicant is an eldersister to GNN and sister in law to DNK. They both are aware what the role of a legal guardian entails and are committed to assume parental responsibility over the child if the applicant is unable to discharge the role.
 11. The court also interviewed the minor and observed that he appeared settled and recognised the applicant as his mother.
 12. 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.
13. The applicants is aged 53 years. Although she is a single applicant seeking to adopt a male child, she falls within the special circumstances provided by the Adoption committee on January 13, 2010. The applicant is a nurse, the child has a medical condition that requires special care and attention, in her letter of motivation the applicant details that she is motivated by the fact that she feels inspired to provide a loving environment for the child.
14. 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

15. 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;
 - (b) the best interests of the child shall include, but shall not be limited to the considerations set out in the First Schedule.

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;

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 applicant. Accordingly, I allow the prayers sought in the Originating Summons dated January 17, 2023 and order as follows:

1. That the applicant RWN is allowed to adopt the child currently identified as Baby MK a.k.a M
2. That henceforth the child be renamed as ACN
3. That the Child's date and place of birth be deemed to be July 28, 2019 in Nairobi County
4. That the Child is presumed to be a Kenyan Citizen by birth and consequently entitled to all the rights and benefits in respect thereof



5. That the Registrar to make the appropriate entries in the Adopted Children's Register
6. That GNN and DNK are appointed as Legal Guardians of the minor
7. That the Guardian ad Litem be 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 Kimenyi Advocates for the applicant

