



**In re Abandoned Female Baby alias Baby A alias Unknown African Female
alias Abandoned Baby A (The Child) (Adoption Cause E046 of 2020)
[2023] KEHC 18636 (KLR) (Family) (27 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 18636 (KLR)

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

FAMILY

ADOPTION CAUSE E046 OF 2020

DKN MAGARE, J

APRIL 27, 2023

IN THE MATTER OF: CHILDREN'S ACT NO. 8 OF 2001

AND

IN THE MATTER OF: AN APPLICATION BY JNK FOR AN ADOPTION

**IN THE MATTER OF: ADOPTION OF ABANDONED
FEMALE BABY ALIAS BABY A ALIAS UNKNOWN AFRICAN
FEMALE ALIAS ABANDONED BABY A (THE CHILD)**

IN THE MATTER OF

JNK APPLICANT

JUDGMENT

1. By Chamber summons dated 18/8/2020, the Applicant sought and was granted appointment of SNW as the guardian ad litem. The appointment was made on 14/7/2022 by Lady Justice L. Achonde after several false starts.
2. After a lull in the proceedings, the Deputy Registrar placed this matter before me on 13/4/2023 during the Rapid initiative. Miss Onyiego appeared representing the Applicant. I heard witnesses and perused the evidence produced. The Applicant is 51 years old and not married. She testified that the baby was placed in 2019 with her. She prayed that her application be allowed.
3. The legal guardian testified and stated that she was in a position to that as a legal guardian as a default guardian. The Guardian ad litem testified and produced her report that recommends the adoption.
4. A report dated 28/2/22 was filed by the directorate of Children Services. The financials were enough to take care of the minor. The report indicates that they have bonded. The Report was signed by VN.



5. The guardian ad litem filed her dated 5/8/2012 SNW produced the report. The applicant stated that she applied and the child was placed in her custody in 2019. I have reviewed the evidence tendered. The applicant meets the financial and the legal requirements.
6. I am satisfied that the applicant has met the requirements of sections 184 and 183 of the Civilian Act. Section 183 provides as doth: -

“Section 183 provides as doth –

Power to make adoption orders.

- (1) Subject to this Act, the High Court may, on an application made in the prescribed form, make an order, in this Act referred to as "adoption order", authorizing an applicant to adopt a child.
- (2) All proceedings under this Part shall be heard and determined in chambers, and the identity of the child and the applicants shall be kept confidential.
- (3) In this Act, adoption means local, kinship and foreign adoption.
- (4) For the purposes of this Part—
 - (a) "kinship adoption" has the meaning assigned to it in section 2;
 - (b) "local adoption" means an adoption in relation to which—
 - (i) the child is resident in Kenya; and
 - (ii) the adopting parent or parents are Kenyan nationals resident in Kenya; and
 - (c) "foreign adoption" means an adoption in relation to which —
 - (i) the adopting parent or parents are Kenyan nationals with dual citizenship;
 - (ii) the adopting parent or parents are foreign nationals whether or not resident in Kenya;
 - (iii) the adopting parent or parents are not Kenyan nationals but are biologically related to the child; or
 - (iv) the adopting parent or parents were once Kenyan nationals but have lost their nationality by operation of the law of the host country to which the prospective parent or parents have a nationality.

7. The applicants have also met the requirements of section 186 of the [children act](#), which provides as follows: -

“Section 186- Who may apply to adopt a child.

- (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.
 - (4) The Court shall not make an adoption order in favour of a sole male applicant, unless the applicant is a blood relative of the child.
 - (5) The Court shall not make an adoption order in favour of the following persons unless the Court is satisfied on reasons to be stated on the record that there are special circumstances that warrant the making of the adoption order an applicant or joint applicants who has, or both have, attained the age of sixty-five years.”

8. I am also satisfied that the Applicant is not disqualified by dint of section 186 (6) of the Children’s Act. The said section provides as follows: -

- 6) The Court shall not make an adoption order in favour of an applicant or joint applicants if the applicant or joint applicants, or any of them—
 - (a) is of unsound mind within the meaning of the *Mental Health Act* (cap. 248);
 - (b) is incapable of exercising proper care and guardianship of a child;
 - (c) has been convicted by a court of competent jurisdiction for any of the offences specified in the Third Schedule or similar offences;
 - (d) in the case of joint applicants, if the applicants are not married to each other;
 - (e) is a sole male applicant except where the applicant is a biological relative of the child; or
 - (f) is a foreign applicant except where the applicant is a biological relative of the child.

9. I therefore allow the undated originating summons supported by the affidavit dated 18/8/2020.

Determination

- a. The applicant JNK is authorized to adopt abandoned baby Female also baby A alias unknown African female alias baby A to be known as PAW.
- b. The Guardian and litem be discharged.
- c. IK be appointed a legal guardian for the child.
- d. The Registrar General to enter this adoption in the Registrar of adoption.
- e. The child be declared to be borne in Kenya on 4/5/2018, in Nairobi.
- f. The Registrar of Births and deaths do issue a birth certificate to the child.



- g. The Registrar General be authorized to issue a birth certificate for the child.
- h. The Guardian ad litem be discharged.
- i. This file be sealed and closed.

**DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 27TH DAY OF APRIL, 2023.
JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

KIZITO MAGARE

JUDGE

In the presence of:

Miss Onyiego for the Applicant

Court Assistant - Firdaus

