



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Baby LM alias Abandoned Child (Adoption Cause E059 of 2021)  
[2023] KEHC 17940 (KLR) (Family) (27 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 17940 (KLR)

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

**FAMILY**

**ADOPTION CAUSE E059 OF 2021**

**EKO OGOLA, J**

**APRIL 27, 2023**

**IN THE MATTER OF THE CHILDREN'S ACT, 2001**

**AND**

**IN THE MATTER OF ADOPTION OF BABY LW ALIAS ABANDONED CHILD**

**IN THE MATTER OF**

**DKI ..... 1<sup>ST</sup> APPLICANT**

**FMK ..... 2<sup>ND</sup> APPLICANT**

**JUDGMENT**

1. Before this Court is the Originating Summons dated May 26, 2021 by which the applicants DKI and FMK seek the following orders: -
  1. Spent
  2. That the Director of Children Services, Ministry of Labour, Social Security and Services investigate the Applicant's fitness to adopt and file a report
  3. That the Applicants be authorized to adopt Baby LM Alias Mawira Alias Abandoned Child, to be known as EMK
  4. That the child be presumed to be a Kenyan Citizen by birth
  5. That the child's date of birth be February 20, 2016 and the place of birth be Igoji Meru County
  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 JKI and JSK be appointed the legal guardians of the child in event of the death or incapacity of the Applicants before the child is of age
2. The Summons was supported by the statement of even date sworn jointly by the applicants and an Affidavit in support. The matter was canvassed by way of viva voce evidence on the online platform.
3. PW1 was Daniel Keli Imony the 1<sup>st</sup> Applicant herein. He testified that he is married to the 2<sup>nd</sup> Applicant since 1991 but they have not been able to get a child of their own. They are desirous of adopting a child. That he has lived with baby LM since 2019. PW1 testified that he understands the implication of an adoption order and is aware that the child will be entitled to inherit his wealth. PW1 testified that he is in agreement with his wife the 2<sup>nd</sup> Applicant to adopt the child.
4. PW2 was Florence Mweli Kimeu the 2<sup>nd</sup> Applicant herein who testified that she is married to PW1 since 1991; that she wishes to adopt the baby herein; she understands the implication of adoption order and that the child is entitled to inherit her wealth. PW2 testified that the child was placed in their care on March 23, 2019. She loves the baby and the baby calls her mother.
5. PW3 was Petronilla Katuku Kioko who testified that she is the court appointed guardian Ad litem for the child. She has known the applicants for over fifteen (15) years; she visited the Applicants to find out how they relate with the child and she filed a report in this court recommending the adoption.
6. PW4, Caroline Olilo, testified on behalf of the Director children services. They visited the Applicants and filed a report dated February 28, 2022 in this court recommending the adoption.
7. PW5, Ephraim Njama, testified that he is the Managing Trustee of Change Trust Managing Society. PW5 prepared a report dated January 30, 2019 recommending the adoption.

### **Determination**

8. I have carefully considered this application for adoption the various Affidavits and Reports on record as well as the relevant law. I have also considered the evidence adduced in open court. The preliminary requirements for the making of an Adoption Order are set out in Section 156(1) of the [Children's Act 2001](#) which provides as follows: -
  - “ 159 No arrangement shall be commenced for the adoption of a child unless the
    - 1 child is at least six (6) weeks old and has been declared free for adoption by a Registered Adoption Society in accordance with the Rules prescribed in that behalf.”
9. The subject child was found abandoned on May 11, 2018. By now she is well above the six (6) week age limit provided for in law for a child eligible for adoption. The Child was abandoned and was found by VCO Charles Kirago and AP officers in Igoji, South Imenti, Meru County.
10. The child was placed at Neema House Infant Rescue Centre. Thereafter Nkubu Children's Court committed the child to same home on June 12, 2019. The child was declared free for Adoption as per the Certificate Serial Number xxxx by Change Trust Adoption society vide a certificate to declare a child free for Adoption. On March 23, 2021 the child was released into the custody of the Applicants under a Foster Care Agreement. The legal pre-requisites for an adoption order have accordingly been met.
11. The duty of this Court is to analyze the material placed before it and make a determination as to whether the Applicants are suitable adoptive parents. The Applicants are a married couple and Kenyan



- citizens. Their marriage certificate serial number xxxx is attached at page 22 of their documents. Copies of their National Identity Cards are attached at pages 20 and 21.
12. The Applicants are financially stable as evidenced by their bank statements and the certificates of ownership at pages 23-40 of the bundle of documents. The report by the Guardian ad Litem states that the Applicants are financially stable and in a good position to provide for the needs of the child.
  13. The Applicants were examined and found to be physically and mentally fit. Copies of their medical reports are at pages 41-52. The Applicants have also annexed copies of their Certificates of Good Conduct at pages 53 and 54 issued by the Kenya Police Service which prove they have no criminal antecedents.
  14. The Applicants have appointed JKI and JSK as a Legal Guardians of the child. The legal guardians have signed a consent dated June 26, 2018. The documents relating to the consent and the copies of their Identity Cards have been provided at pages 55-59 of the Applicants' bundle of documents.
  15. Given that this child was abandoned there exists no known person from whom consent for this adoption can be sought and/or obtained. In the circumstances I dispense with the requirement for consent in line with Section 159(1)(e) of the Children's Act.
  16. Based on the foregoing I am satisfied that the applicants are suitable adoptive parents.
  17. Article 14 of the Constitution of Kenya 2010 deals with issue of Citizenship. Article 14(4) provides as follows:
    - 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."
  18. The subject child was abandoned at birth in Igoji, South Imenti which is in Meru County within the Republic of Kenya. He is therefore presumed to be a Kenyan citizen by birth and I so declare.
  19. In deciding upon any matter involving a child, Courts are obliged to give priority to the best interest of the said child. Section 44(2) of the Children Act 2001 provides: -
    - 2 In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration".
  20. The child has lived with the Applicants in their home since March 23, 2019 to date. There is no doubt that the child has bonded with the Applicants and considers them as his parents.
  21. The various reports filed in court all recommend the adoption. I am satisfied that the adoption will serve the best interests of the subject child. Accordingly, I allow this application and make the following orders: -
    1. The Applicants DKI and FMK are authorized to adopt the child known as Baby LM Alias Mawira Alias Abandoned Child.
    2. Upon adoption the child will be known as EMK
    3. The child is declared Kenyan Citizen by birth and is entitled to all the rights and liberties due to a citizen of Kenya.
    4. The child's date and place of birth is declared to be February 20, 2016 at Igoji, Meru County.



5. The Registrar General is directed to make appropriate entries in the Adopted Children's Register
6. The Director Immigration is directed to issue the child with a Kenyan passport in accordance with the immigration laws, rules and procedures
7. JKI and JSK are appointed as Legal Guardians of the child.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27<sup>TH</sup> DAY OF APRIL 2023.**

**E K OGOLA**

**JUDGE**

**M/s Kiguatha for the Applicants**

**Ms Gisiele Court Assistant**

