



In re Baby CB aka Abandoned Baby JM (Child) (Adoption Cause E174 of 2022) [2023] KEHC 3899 (KLR) (Family) (24 April 2023) (Judgment)

Neutral citation: [2023] KEHC 3899 (KLR)

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

ADOPTION CAUSE E174 OF 2022

MA ODERO, J

APRIL 24, 2023

IN THE MATTER OF

DOM 1ST APPLICANT

MJK 2ND APPLICANT

JUDGMENT

1. Before this court is the originating summons dated September 23, 2022 by which the Applicants DOM and MJK seek the following orders:-
 - “ 1. That the Applicants be authorized to adopt BABY CB a child who is to be known as TNO and the Registrar General be directed to enter this adoption into the Register of Adoptions.
 2. That EO and DIM be appointed as the legal Guardians of the child.
 3. That the child be presumed to be born in Kenya.”
2. The Application was supported by statement of even date sworn by the Applicants. The matter was canvassed by way of vive voce evidence on virtual platform.
3. The Applicants are a couple who got married to each in January 2016. Their union has not been blessed with any child. The Applicants now seeks to adopt a child in order to complete their family and out of a 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 the subject child all rights due to a biological child including the right to inherit.



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 was born on October 16, 2021. He is now aged one and half (1½) years old and is above the Six (6) week age limit provided for in law.
8. Buckner Kenya Adoption Services which is a registered Adoption Agency have annexed to their report a copy of their certificate Serial Number 0550 dated May 19, 2022 declaring the child Free For Adoption. I therefore find that the legal prerequisites for an adoption order 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. (Pages 1 to 2 of the Summons).
10. The Applicants are couple who solemnized their union on January 2, 2016 at the Kakamega Church of Christ. A copy of their Marriage Certificate XXXX is annexed at Page 5 of the summons. The couple have no biological children of their own. They have opted for adoption as a way to extend their family.
11. The Applicants are both gainfully employed. The 1st Applicant works with Milago Human Resource as Analyst whilst the 2nd Applicant works a Freelance writer Annexed to the summons (Pages 27 to 28) are copies of the Applicants Bank statements. I find that the Applicants are financially stable and have the means to provide for the child.
12. The Applicants are both Christians who worship at the Roysambu CITAM Church. They intend to raise the child in the Christian faith. At Page 26 of the summons is a letter of recommendation dated June 19, 2021 written by Reverend Laban Otiato the Vicar of Maraba Parish in Kakamega.
13. The Applicants were examined by a doctor and were both found to be mentally and physically fit. They have annexed copies of clearance certificate issued by the Director of Criminal Investigations confirming the neither Applicant has a criminal record.
14. The Applicants stated that their extended family are aware of and support their intention to adopt the child. They have appointed the brother and sister-in-law of the 1st Applicant as legal Guardians for the child. The proposed legal Guardians Evans Okwara and Dionnie Injete Musambi have both signed a consent dated September 23, 2022 confirming their willingness to be appointed as the legal Guardians for the child.
15. All in all I am satisfied that the Applicants are suitable adoptive parents.
16. The subject child is a boy child who was born at the Mbagathi Hospital in Nairobi County on October 16, 2021. The child's biological mother who gave her name as JMN absconded from the hospital on



- October 19, 2021 leaving her baby behind. Neither mother or her relatives ever returned to reclaim the child.
17. The abandonment of the child was reported at Kenyatta Police Station *vide* OB Number 18 of October 19, 2021. On December 17, 2021 the Nairobi Children’s Court committed the child to New Life Home Trust for Care and Protection. On June 3, 2022 the child was released into the custody of the Applicants under a Foster Care Agreement.
 18. The subject child having been born in the Republic of Kenya is declared to be a citizen of Kenya by birth.
 19. Efforts to trace the biological mother/relatives of the child have born no fruit. Attempts made to contact the mother through the telephone contact she provided to the hospital did not succeed as the number had been switched off. To-date no person has come forward to claim the child. A final Police letter dated May 6, 2022 is annexed at Page 35 of the summons.
 20. Given the fact of the child’s abandonment there exists no known person from whom consent for this adoption can be sought and/or obtained. I therefore waive the requirement for consent in line with Section 187 (1) (a) of the Children Act 2022.
 21. 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)
 22. This is a child who was abandoned just two (2) days after his birth. The child faced an uncertain future living in various children’s homes and other similar institutions. This adoption allows the child the opportunity to be raised in a stable and loving home environment.
 23. The child has lived with the Applicants in their home since June 2022. The child has bonded with the Applicants and this is the only family the child knows. I was able to see the child online. He was a healthy toddler who was at ease in the company of the Applicants.
 24. A home visit was conducted by the children’s officer. The Applicants reside in a three bed-roomed apartment [particulars withheld] Apartments in Kamiti. The house was found to be a spacious and was connected to all amenities. The apartment was in a secure compound and it was found to be a conducive environment for raising a child.
 25. 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 recommend the adoption.
 26. Finally I am satisfied that this adoption serves the best interests of the subject child. Accordingly I allow this application and make the following orders:-
 - (1) The Applicants DOM and MJK are authorized to adopt the child known as BABY CB.
 - (2) Upon adoption the child will be known as TNO
 - (3) The Registrar General is directed to make the relevant entry in the Adopted children’s Register.
 - (4) EO and DIM are appointed as the legal Guardians for the child.



DATED IN NAIROBI THIS 24TH DAY OF APRIL 2023.

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MAUREEN A ODERO

JUDGE

