



REPUBLIC OF KENYA



KENYA LAW
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**In re Baby CN (Adoption Cause E002 of 2023)
[2023] KEHC 18706 (KLR) (31 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 18706 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
ADOPTION CAUSE E002 OF 2023**

MW MUIGAI, J

MAY 31, 2023

IN THE MATTER OF

KI 1ST APPLICANT

RMK 2ND APPLICANT

JUDGMENT

1. The Applicants herein, KI – ID No XXXX Tel No 0732XXXX/0719XXXX and RMK – ID No XXXX – Tel No 0790XXXX sought by their application to be allowed by this Court to adopt Baby CN (hereafter “the child”).
2. The Originating Summons application dated December 6, 2022, the Applicants sought the following orders; that GN ID No XXXX be appointed as Guardian *Ad Litem* in this case; that the Director – Children’s Departments, Office investigates the Applicants’ fitness to adopt and file a report; that the Applicants be authorized to adopt baby CN and the baby be known as MNK; that JMM be appointed the legal Guardian of the child; that the Registrar General be ordered to make in the adopted Children’s register an entry recording the adoption in accordance with the particulars set out in the schedule attached hereto; that the child be considered a Kenyan citizen.
3. GN was appointed by this Court as Guardian ad Litem on February 7, 2023.
4. The Applicants herein are residents of Kilungu Ward, Kaiti Constituency within Makueni County. They are husband and wife, they married on December 18, 2021 as per attached copy of marriage certificate No XXXX. Katua Itumange 1st Applicant is a businessman running a butchery while Regina (2nd applicant) is a farmer. The Applicants annexed the following documents in support of their application ;Letter from Nanyuki Police Station to Neema House Infant Rescue Centre dated November 18, 2021.Care Agreement between the Applicants and the Neema House Infant Rescue Centre.Committal order from Nanyuki Law Courts.Final police letter to the rescue home dated May 23, 2022.Medical reports/certificates for both the 1st and 2nd Applicants,Copies of IDs for both



Applicants Marriage certificate No XXXX. Admission form for the minor to Neema Infant Rescue Centre.

5. The child (Caleb Nawiri) who is the subject of the present adoption proceedings was born on November 3, 2021 in Nanyuki. The minor was found abandoned in a bush behind County Assembly Offices at Nanyuki in Laikipia County on November 7, 2021 and rescued by Inspector Kiptoo of Tel No 0723XXXX. The report of abandonment was reported at the Nanyuki Police Station where it was recorded vide OB No XXXX/2021. The minor was taken to Nanyuki Teaching & Referral Hospital for medical checkup and admitted at the New Born Unit.
6. The Sub-County Children's Officer Laikipia East was involved and sought a vacancy at Neema Infant Rescue Centre Nanyuki and the minor was admitted to the said home as a child in need of care and protection on November 15, 2021. The minor was committed to the care of the home through the Children's Court at Nanyuki on January 18, 2022 vide Committal Case and Protection Case No E001 of 2022. A final Police letter from Nanyuki Police Station dated May 23, 2022 indicated that nobody had claimed the minor since he was abandoned and that the search for his kindred became futile. The minor was freed for adoption by the Kenya Children's Homes Adoption Society in a Case Committee sitting of June 15, 2022 vide a Certificate declaring a child free for adoption Serial No XXXX.
7. The following documents were availed from Neema House Infant Rescue Centre for baby Caleb Nawiri;
 1. Photo of the minor
 2. Initial police letter from Nanyuki Police station
 3. Discharge Summary
 4. Hospital Letter of release
 5. Hospital referral letter to the children's officer
 6. Referral letter by children's officer to Neema House Infant Rescue Centre
 7. Admission form
 8. Clinic card
 9. Committal order
 10. Final police letter
8. Pursuant to Section 187 (2) (1) of the [Children Act 2022](#), the Kenya Children's Home Adoption Society, the relevant Adoption Society, prepared and filed in Court a favorable report in respect of the proposed adoption of the child by the Applicants. Another report in respect of the proposed adoption of the child by the Applicants was prepared by the Director of Children's Services, and this report was similarly in favor of the proposed adoption. The Guardian Ad Litem, GN also filed the statutory report in which he noted that the proposed adoption of the child by the Applicants would be in the best interests of the child.
9. The Kenya Children's Home Adoption Society filed their social Inquiry and Home Study Report dated February 2, 2023. Ms Pauline Kitema from K C H appeared in Court on March 23, 2023 in respect of this Adoption. She told the Court that the applicants approached the Society in January, 2022 with a desire to be placed with a child. The applicants went through vetting process and were found to be suitable adoptive parents in the Case Committee of June 15, 2022. The applicants were



placed with the minor on June 27, 2022 and the minor has been handled very well and is well taken care of.

10. The Agency report contains family and professional background information of the Child's Adoptive Parents. According to the report the Applicants made an Adoption Application to Kenya Children's Home Adoption Society on January 26, 2022 with an intention of being ratified for placement with a boy child aged below two years with a view of adopting. The Applicants were taken through the relevant interviews, a home assessment was carried out as well as the pre-placement counselling. The Applicants were found eligible. A Case Committee sitting on June 15, 2022 considered their application and approved them as adoptive parents. Prior to the placement baby Caleb Nawiri was declared free for adoption by the Society's Case Committee on June 15, 2022 where a freeing certificate Serial Number XXXX was issued in compliance to Section 187 (2) (1) of the Children Act 2022
11. The Applicants have been married for over 20 years. They married in the year 2002 through Kamba customary law and later solemnized their marriage on December 18, 2021 at [particulars withheld] – Nunguni. Mr K (1st applicant) operates his own butchery while R (2nd applicant) does farming and owns 2 dairy cows and a calf. The Applicants have not been able to get children of their own and have decided to parent through adoption. The Applicants motive for adoption is that they want to give a child a sense of belonging and support just like their own.
12. The Applicants live in a two bedroomed house which is secure and has electricity. They are both self-employed with a monthly income of kshs 40,000/- hence capable to take care of the minor. The Applicants extended family is supportive of the adoption and even JM (Regina (2nd Applicant's younger sister) agreed to be the child's legal guardian. The Applicants are law abiding citizens with no criminal record, have legal requirement for adoption and are medically fit. The Adoption Society recommends this Adoption as it will be in the child's best interest.
13. The Director of Children Services filed a Report dated March 20, 2023 in respect of the proposed adoption of the child by the Applicants was prepared by Emily Kimanzi Machakos Sub County Children Officer. Emily Kimanzi appeared in Court on March 23, 2023 in respect of this proceedings and stated that she visited the home of the Applicants and was satisfied that they are suitable to adopt the minor. They have built in the inherited parcel of land a well-furnished 2 bedroomed house with electricity and water. The Applicants have taken care of relatives children thorough kinship care hence they are able to take care of the baby. The minor has bonded well with the Applicants.
14. The report contains family background information of the Child's Adoptive Parents. The Applicants live with children of their relatives namely TM and AM who they are educating and providing them. During the home visit it was observed that the Applicants have bonded well with the minor and they live comfortably in their house and have the required amenities. The Applicants have no criminal record. The applicants are socially and economically able to take care of the child. The adoption was recommended.
15. The Guardian ad Litem, GN filed her Report dated March 20, 2023 in support of these Adoption proceedings. She stated that she has known the applicants since the year 2015. She had visited the family and observed that the minor interacted well with the Applicants and it is in the best interest of the child to allow the adoption. The Applicants have support from both the extended family which have fully welcomed the minor as part of the family. The Guardian Ad litem recommended the adoption.
16. The Legal Guardian JMM filed her Consent to be legal Guardian sworn on December 6, 2022 stating that the applicants are her brother in-law and sister respectively. She understands her duties as a legal guardian in case of any eventuality.



17. All the statutory reports that have been filed in respect of the proposed adoption of the child by the Applicants have recommended that this Court allows the adoption of the child. This Court has evaluated the facts of this adoption. This is a local adoption. It is evident that the Applicants has fulfilled all the legal requirements relative to the adoption of the child.
18. The home visits by the guardian Ad Litem, the Adoption Society and the Director of the Children's Services established that the Applicants are financially and socially stable and have emotional capability to provide for the upkeep and education of the child and give parental care. This Court observed the Applicants with the child in Court and it was evident that in the period that the Applicants have had the custody of the child, the child has bonded well. The child considers the Applicants to be his parents.

Disposition

1. On the basis of a careful examination of the documents presented before this Court as well as the observations made therein, this Court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicant. Hence, this Court allows the Applicant's application.
2. The Applicants, KI and RMK are hereby allowed to adopt Baby CN.
3. Henceforth, the child shall be known as MNK
4. The child's date of birth is November 3, 2021 and the place of birth shall be Nanyuki.
5. The child is a Kenya Citizen by birth and entitled to all rights of a Kenyan citizen.
6. JMM shall be the legal guardian of the child should such eventuality arise.
7. This Court directs the Registrar General to duly enter this order in the Adoption Register.
8. That the Directorate of Children Services to carry out supervision on the said adoption and file a report on the ongoing safety/security within one year of the Adoption in the best interest of the child Section 8 of Children's Act 2022.
9. The Guardian *Ad Litem* is hereby discharged.

It is so ordered.

DELIVERED SIGNED & DATED IN OPEN COURT AT MACHAKOS THIS 31ST DAY OF MAY 2023 (PHYSICAL/VIRTUAL CONFERENCE).

M W MUIGAI

JUDGE

In The Presence Of:

Ms Kalinga - For The Applicants

Geoffrey/patrick - Court Assistant(s)

