



REPUBLIC OF KENYA



**In re Baby AM (Adoption Cause 1 of 2022)
[2023] KEHC 18844 (KLR) (30 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 18844 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
ADOPTION CAUSE 1 OF 2022
GL NZIOKA, J
MAY 30, 2023
IN THE MATTER OF THE CHILDREN ACT (ACT NO 8 OF 2001)
AND
IN THE MATTER OF BABY AM
AND
IN THE MATTER OF AN APPLICATION FOR ADOPTION BY MMM
IN THE MATTER OF
MMM APPLICANT**

JUDGMENT

1. By an ex parte originating summons dated July 24, 2022, brought under the provisions of section 4, 154, 156(1), 157(1), 158(1)(a), 159(4),(6),(7) and (8) (a), 160(1),(2) and (4), 163, 164(1) and 170 of the *Children Act* (Act No 8 of 2001), section 24 of the *Interpretation and General Provisions Act* (Cap 2) the Laws of Kenya, section 9 of the *Kenya Citizenship and Immigration Act, 2011*, the *Constitution of Kenya* and all other enabling provisions of the law and supported by the grounds thereto and the statement in support of the even date sworn by the applicant, she seeks for the following orders
 - a. That the Applicant, MMM, be allowed to adopt the child currently identified as BABY AM.
 - b. That henceforth, the child be renamed AM
 - c. That the child's date and place of birth be declared to be January 3, 2020 at Kericho.
 - d. That the child be presumed to be a Kenyan Citizen by birth, and consequently, entitled to all the rights and benefits in respect thereof.



- e. That consent of the child’s biological parents/guardians be dispensed with.
 - f. That CMW and RWM 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
 - g. That the guardian ad litem be discharged.
 - h. That the Registrar General be directed to make the appropriate entries in the Adopted Children’s Register.
 - i. That this court do issue such further orders as are in the interest of justice.
2. The applicant avers that, she is forty-seven (47) years, having been born on January 1, 1975; a Kenyan citizen and resides at Kikopey, Naivasha within Nakuru County. That she is single as she has never been married and her motivation for adoption of a child stems from her love of children and a yearning to be a “mum”. Further she is a Christian and intends to bring up the child with Christian values.
 3. That she is a business lady running [Particulars Withheld] Hotel with a monthly income ranging from Kshs 35,000 to Kshs 70,000. She has financial means as evidenced by the bank statements produced for the months of March and April 2022, and title deeds produced in respect of Gilgil/Gilgil/39XX0 and 1/39XX8.
 4. She states that she is fit both physically and mentally and does not suffer from any ailment as evidenced by the medical report produced titled “Medical Particulars of Prospective Adopter(s)”. Further vide a form titled “Reference Information on Prospective Adopter(s)” her friend RM who has known her for over 30 years and RW for over 20 years have given positive referrals. That, additionally, her family and friends support the adoption as evidenced by the letters by FMK and RM. Furthermore, her sister CMW and husband R have agreed to be legal guardians of the child in case of her inability to discharge her responsibilities. Finally she states that she has never been convicted of any criminal offence of against morality as evidenced by the police clearance certificate Ref No PCC-AAAFGRF6.
 5. That as regards the child, she is a Kenyan national of Sub-Saharan race. That she was presumably born on January 3, 2020 and abandoned at the gate of Kericho Township Primary School. She was taken to Kericho Referral Hospital for treatment and the matter reported to Nyagacho Police Station vide OB No 10/3/01/2020. By a letter dated January 13, 2020, the hospital reported the abandonment to the Sub-County Children Officer at Kericho. That the officer referred the child for admission into New Life Trust and was released from hospital vide a discharge summary dated January 20, 2020.
 6. On January 21, 2020, the child was committed into the Home vide Children’s Court at Kericho in Protection and Care Case No. 9 of 2020. The child was then registered into the institution as evidenced by certificate of registration No NCCSC No 0029, issued by the Cabinet Secretary, Ministry of Labour and Social Protection. Further, the police investigated the matter and nobody has come up to claim the child as per the letter dated March 13, 2021 from the officer in charge of Nyagacho Police Station. Furthermore efforts by the Adoption Society to trace the relatives of the child have not borne any fruits. Consequently, the child was declared free for adoption by the case committee of the Adoption Society of Kenya on April 30, 2021, as per Freeing a child for Adoption serial No 00397.
 7. The applicant states that, the officials of the Adoption Society have taken her through “Explanatory Memorandum for Adopters” which she signed a certificate of acknowledgment on February 27, 2018. Furthermore a social inquiry was carried out on her suitability to adopt the child as evidenced by the form of inquiry on Prospective Adopters. That all data gathered by the society is collated



and compiled in a comprehensive Home Study Pre-Placement Report, detailing the applicant's background, motivation to adopt and recommendations of the society. On August 17, 2018, she was approved to adopt the child and on July 2, 2018, the child was placed under her care and control as per the Foster Agreement between New Life Home and the applicant.

8. It suffices to note that, the applicant filed an *ex parte* chamber summons alongside the *ex parte* originating summons. The application of the even date is brought under section 3A of the [Civil Procedure Act](#) (cap 21) Laws of Kenya, Section 19, and 160 (1)(2) and (4) of the [Children Act](#) (No 8 of 2001), and all other enabling provisions of the law and the applicant seeks for orders that
 - a. That GWK be appointed as *guardian ad litem* in these proceedings and be directed to investigate and file a report on the safety of the child in the Applicant's custody.
 - b. That the Director, department of Children Services, Nakuru County do investigate the Applicant's suitability to adopt or otherwise and file a report in respect thereof, and
 - c. Any further orders as this Honourable Court may deem fit to grant
9. The application is supported by the grounds thereto and the affidavit of the proposed *guardian ad litem*, GWK dated July 24, 2022. She averred that, she is a social worker at Dr Kahara Foundation which deals *inter alia* with orphaned children and the aged. That her experience with the children and as a parent accords her the requisite experience to act as a guardian ad litem. That if appointed, she will act as the court's eye during the adoption process, and give a confidential report of her findings and follow all the court orders during the process.
10. In addition and annexed to the application is an affidavit of fitness of the proposed guardian ad litem sworn by JN, who avers that, he has known her for over six (6) years and believes she is moral, upright and has knowledge to ascertain whether the child is bonding well, has a good happy healthy and mentally life. He recommends the proposed guardian ad litem for appointment.
11. On the March 2, 2023, the court allowed the *ex parte* chamber summons application after hearing the respective parties thereto. On April 20, 2023, the guardian ad litem filed the confidential report dated April 17, 2023 in court. In addition, the Agency filed a report dated January 11, 2023, on April 20, 2023, and that of the Directorate of Children Services dated February 24, 2023 was filed on April 28, 2023.
12. Be that as it were, the power to make adoption orders is provided for under section 154 of the [Children Act](#) No 8 of 2001 (herein the Act). The preliminaries for the same are provided for under section 156 of the Act; which provides *inter alia* that, the child be at least six weeks old and declared free for adoption by a registered society. In addition section 157 states that, the child shall have been in care and continuous control of the applicant within the Republic of Kenya for a period of three consecutive months preceding the filing of the application and both the child and applicant(s) be evaluated by a registered adoption society in Kenya
13. The provisions relating to the applicant are provided for under section 158 of the Act, that, the applicant has attained the age of 25 years, and is at least 21 years older than the child and not older than 65 years, is a relative of the child or is the mother or father of the child. Further, the applicant be of sound mind, has no criminal record, not a homosexual, or a sole foreign applicant. The applicants disqualified are provided for under sub-section (2). Furthermore section 159 lays down the procedure



and requirements to be followed and/or provided for an adoption order to be made or issued, whereas section 160 of the Act, deal with the appointment and responsibility of the guardian ad litem.

14. Pursuant to the aforesaid, the applicant has filed and annexed to the originating summons the following documents.
 - a. Guardian ad litem report dated April 17, 2023 in which she concludes that, the applicant appears to be loving, able and competent parent. That she loves the child, provided a comfortable home and is raising up the child with strong Christian values. The guardian ad litem recommends that the Hon. court allow the applicant to be the adoptive parent of the child.
 - b. Bucknes Kenya Adoption Services report dated January 11, 2023 indicating the child was freed by Change Trust Adoptions Agency on its sitting on April 30, 2021. That, the child was abandoned and remained unclaimed for over six months as per the attached certificate to declare the child free for Adoption Number 00397.
 - c. Children's officers report on the applicant's suitability for adoption of the child herein signed by Osoro, DO, Sub-County Children's Officer, Gilgil in which it is reported that from the interview with the applicant and observation the child is in safe hands of the applicant, who has met all the requirement for an adoptive parent and is thus recommended for approval of the adoption process, in the interest of the child.
15. In conclusion I find that the originating summons has merit and I allow it as prayed
16. Those then are the orders of the court

DATED, DELIVERED AND SIGNED ON THIS 30TH DAY OF MAY 2023

GRACE L. NZIOKA

JUDGE

In the presence of;

Ms Kimenyi for the applicant

N/A by the Applicant

Ms Ogutu-Court Assistant

