



REPUBLIC OF KENYA



**In re AJ alias WN alias W (Child) (Adoption Cause E196 of 2022)
[2023] KEHC 20062 (KLR) (Family) (30 June 2023) (Judgment)**

Neutral citation: [2023] KEHC 20062 (KLR)

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

FAMILY

ADOPTION CAUSE E196 OF 2022

PM NYAUNDI, J

JUNE 30, 2023

IN THE MATTER OF AJ ALIAS WN ALIAS W.

IN THE MATTER OF

JK 1ST APPLICANT

MNM 2ND APPLICANT

JUDGMENT

1. The Applicants, JK and MNM *vide* Originating Summons dated November 4, 2022 have made an application for the adoption of Baby Aj Alias Aj Alias Wn Alias W the child herein. The applicants have been married since December 23, 2003 and have attached a copy of the affidavit of marriage and the chief's letter of confirmation. They wish to adopt the baby with the intention to care and protect for the child.
2. The matter proceeded for hearing *viva voce* evidence on the Teams virtual platform on the 25th of May 2023.
3. The Applicants are Kenyan Citizens and of the Christian faith. They aver that they have the financial means and capability to take care of the Child. The 1st applicant works as [particulars Withheld], the second applicant is a businessperson operating a retail shop in [particulars Withheld]. They have had custody of the child for a period of 8 years. They reside in Kware area of Embakasi. They fully understand the consequences of an adoption order.
4. The child was found abandoned within Mathare North and taken in by Mefag Children Centre, a charitable children institution.
5. The director of Mefag Children sought temporary placement for the child at Nyumbani Children's Home. The matter of the abandonment was reported at Ruaraka Police Station, where the incident was booked under OB NO 30/09/03/2012. The child was later transferred to Nyumbani Children's



- Home. The child was committed to the Home by order of the Nairobi Children’s Court vide Protection and Care Case No 137 of 2013.
6. Prior to the hearing of the adoption application, Change Trust Adoption Society prepared and filed a report dated August 11, 2015 and issued a certificate serial No xxxx declaring the child free for adoption. On January 19, 2023, the Court appointed a Guardian Ad litem Mr SWB.
 7. The Guardian Ad Litem, SWB was present in Court and presented her report dated March 14, 2023. She confirmed that she visited the Applicants and the Child at their home and observed that they have bonded well, and the child is well taken care of. The Child has also bonded well with the extended family. She recommends that the Applicants be allowed to adopt the Baby.
 8. An officer of the Department of Children Services, Damaris Kobonah prepared a report dated March 21, 2023. The report established that the child was abandoned within Mathare North and the matter was reported to Ruaraka police station under OB Number 30/09/03/2012.
 9. The Report further documents that vide letter dated February 3, 2022; the Police confirmed that neither the mother nor other relatives of the child had come back to claim the child. For this reason, the Department of Children Services confirms the child is free for adoption. The Child was placed with the Applicant on April 21, 2022.
 10. The proposed Legal Guardian WKK attended court and confirmed he is willing to take up the role of legal guardian. He is the 1st Applicant’s uncle.
 11. After carefully assessing the records herein, I am satisfied that the applicant has fulfilled all the legal requirements relating to the Child’s adoption. Section 186 of the *Children Act*, 2022 provides.
 - (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.
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 - (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.
 12. The Applicants are aged 51 years and 59 years respectively.
 13. Article 53 of the *Constitution* of Kenya, 2010 provides the overarching principles which must apply whenever any decision concerning a child is to be considered. It states:

A Child’s Best interests are of paramount importance in every matter concerning the child



14. This principle is restated Under Section 8 of the Children Act, 2022 which provides

Best interests of the child.

- (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;
 - (b) the best interests of the child shall include, but shall not be limited to the considerations set out in the First Schedule.
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- (b) the best interests of the child shall include, but shall not be limited to the considerations set out in the First Schedule.

Section 194 (1) (c) of the Act also requires that if the adoption order is made the order will be in the best interests of the child, having regard to the wishes of the child, depending on the child's age and understanding, and to the ability of the applicant to maintain and educate the child;

15. In view of the foregoing, the court is of the considered view that it is in the child's best interest to be adopted by the Applicants. Accordingly, I allow the prayers sought in the Originating Summons dated November 4, 2022 and order as follows:

- i. The Applicants JK and MNM be allowed to adopt Baby AJ Alias Aj Alias Wn Alias W
- ii. The Child to be known as AKJ
- iii. The Child be presumed to be a Kenyan citizen by birth.
- iv. The child's date and place of birth are declared to be 15th December 2011, Mathare North, Nairobi.
- v. WKK is hereby appointed as legal guardian of Child
- vi. The Registrar be and is hereby directed to enter this adoption into the Register of Adopted Children.
- vii. The Director Immigration is authorized to issue the child with a Kenyan passport
- viii. The Guardian Ad litem is discharged.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 30TH DAY OF JUNE, 2023.

P M NYAUNDI

HIGH COURT JUDGE

In the presence of:

M/s Wangui h/b for Ms Kiguatha for the Applicants

Court Assistant Karani

