



REPUBLIC OF KENYA



**In re Baby aka EP (Adoption Cause E234 of 2022)
[2023] KEHC 20302 (KLR) (Family) (30 June 2023) (Judgment)**

Neutral citation: [2023] KEHC 20302 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E234 OF 2022
PM NYAUNDI, J
JUNE 30, 2023
IN THE MATTER OF THE CHILDREN'S ACT NO 29 OF 2022
IN THE MATTER OF ADOPTION OF BABY AKA EP
AND IN THE MATTER OF AN APPLICATION FOR ADOPTION BY LMK**

JUDGMENT

1. The Applicant, LMK vide Originating Summons dated December 6, 2022 has made an application for the adoption of Baby aka EP the child herein. The applicant is not married. She does not have children of her own and is driven by the desire to provide for the abandoned child and offer her a home.
2. The matter proceeded for hearing via viva voce evidence on the Teams virtual platform on the June 15, 2023.
3. The Applicant is Kenyan Citizen and of the Christian faith. She avers that she has the financial means and capability to take care of the Child. The applicant is Engineer at [particulars withheld]. She has had custody of the child since November 25, 2022. She resides in Ruiru, Kiambu County. She fully understands the consequences of an adoption order.
4. The child is presumably born on December 30, 2021 [particulars withheld] Village in Igembe South. She was on December 30, 2021 found abandoned by the roadside at [particulars withheld] village and rescued by Good Samaritans who informed the area chief who in turn informed the police from Kanuni Police Post who rushed to the scene. The matter was recorded vide Occurrence Book Number 05/xx/xx/2021 and the minor was referred to Nyambene District Hospital for medical examination vide OB.06/xx/xx/2021. The sub-county children's officer -Igembe through a letter from Nyambene District Hospital and sought a vacancy at Neema Infant Rescue Centre-Nanyuki which was availed and the minor was discharged, handed over and admitted to Neema House Infant Rescue Centre as a child in need of care and protection on February 23, 2022.



5. The child was committed to Neema House Infant Rescue Centre by the Children’s Court at Maua vide protection and care case number E019 of 2022 on February 23, 2022. Kanuni Police post in their letter to the Director Neema House Infant Rescue Centre stated that no one had claimed the abandoned minor and their efforts to trace the child’s relatives proved futile. the letter was dated August 2, 2022
6. Prior to the hearing of the adoption application, Kenya Children’s Home Adoption Society prepared and filed a report dated August 21, 2022 and issued a certificate serial No 8xxx declaring the child free for adoption. On January 20, 2023, the Court appointed Guardian ad litem PWG.
7. PWG the Guadian ad litem was present in court, she confirmed to the court that she had visited the applicant’s home. The child was well taken care of and the applicant bonded well with the child. She recommends the adoption.
8. An officer of the Department of Children Services, Ezekiel Kimani prepared a report dated February 14, 2023. The report was countersigned by Mary Atati. The report established that the child was born on December 30, 2021 [particulars withheld] Village in Igembe South. She was on December 30, 2021 found abandoned by the roadside at [particulars withheld] village and rescued by Good Samaritans who informed the area chief who in turn informed the police from Kanuni Police Post who rushed to the scene. The matter was recorded vide Occurrence Book Number 05/xx/xx/2021 and the minor was referred to Nyambene District Hospital for medical examination vide OB.06/xx/xx/2021.
9. The report further documents that on August 2, 2022, Kanuni Police post in their letter to the Director Neema House Infant Rescue Centre stated that no one had claimed the abandoned minor, and their efforts to trace the child’s relatives proved futile.
10. The proposed Legal Guardians PKK AND ZNK attended court and confirmed they are willing to take up the role of legal guardians. They are the applicant’s parents.
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. The court may make an adoption order on application by-
 - (1) .
 - (a) Sole applicant; or
 - (b) Two spouses jointly.
 - (2) The court shall not make an adoption order in any case unless-
 - i. The applicant has attained the age of twenty-five years, but is not above the age of sixty-five years; and
 - ii. 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 Applicant is 31 years.
 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.



13. This principle is restated Under Section 8 of the *Children Act, 2022* which provides Best interests of the child. In all actions concerning children, whether undertaken.
- (1) By public or private social welfare institutions, courts of the 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.

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;

14. 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.
15. Accordingly, I allow the prayers sought in the Originating Summons dated December 6, 2022 and order as follows:
- I. The Applicant LMK be allowed to adopt baby AKA EP
- II. The Child is to be known as NK
- III. The Child be presumed to be a Kenyan citizen by birth born on the December 30, 2021.
- IV. PKK and ZNK are hereby appointed as legal guardians of Child
- V. The Registrar be and is hereby directed to enter this adoption into the Register of Adopted Children and a birth certificate do issue by the Registrar of Births and Deaths
- VI. The Director Immigration is authorized to issue the child with a Kenyan passport
- VII. 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

Court Assistant Karani

