



REPUBLIC OF KENYA



**In re GN (Baby) (Adoption Cause E003 of 2023)  
[2023] KEHC 20036 (KLR) (Family) (30 June 2023) (Judgment)**

Neutral citation: [2023] KEHC 20036 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
ADOPTION CAUSE E003 OF 2023  
PM NYAUNDI, J  
JUNE 30, 2023  
IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001  
IN THE MATTER OF ADOPTION OF BABY GN  
AND IN THE MATTER OF AN APPLICATION FOR ADOPTION  
BY**

**IN THE MATTER OF**

**FJLOO ..... 1<sup>ST</sup> APPLICANT  
CWO ..... 2<sup>ND</sup> APPLICANT**

**JUDGMENT**

1. The Applicants, FJLOO and CWO vide Originating Summons dated November 11, 2022 have made an application for the adoption of Baby Gn the child herein. The applicants have been married since December 13, 2012 and have attached a copy of the marriage certificate serial number xxxx. They wish to adopt the baby with the intention to be parents and nurture their own offspring.
2. The matter proceeded for hearing via viva voce evidence on the Teams virtual platform on the May 25, 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. Both applicants are lecturers at the University of Nairobi, they have had custody of the child for a period of 1 year and 3 months. They reside in at [particulars Withheld], Ngong Road. They fully understand the consequences of an adoption order.
4. The child is estimated to have been born on March 12, 2021 and about two months later, on May 12, 2021, she was found abandoned at the SDA Church compound, Tabaka town, Gucha South Sub-County, Kisii County.



5. The Child was rescued by one EKM who heard the infant's cries and taken to Tabaka Police Station, where the incident was booked under OB NO xx/xx/x/xxxx. Subsequently, the baby was temporarily placed at Faithful Children's Centre. The child was later transferred to New Life Home Trust-Kisumu. The child was committed into the Home on February 1, 2022 by order of the Children's Court at Ogembo Law Courts vide Protection and Care Case No E003 of 2022
6. Prior to the hearing of the adoption application, Buckner Kenya Adoption Services prepared and filed a report dated March 23, 2022 and issued a certificate serial No xxxx declaring the child free for adoption. On January 17, 2023, the Court appointed a Guardian Ad litem Mr JN.
7. The Guardian Ad Litem, Mr JN was present in Court and presented his report dated May 10, 2023. He confirmed that he visited the Applicants and the Child at their home and observed that they have bonded well, and the child is well taken care of. She has also bonded well with the extended family. He recommends that the Applicants be allowed to adopt the Baby.
8. An officer of the Department of Children Services, JN prepared a report dated January 31, 2022. The report established that the child was abandoned at the SDA church compound in Tabaka town, Kisii County, and was rescued by a good samaritan EKM who reported the matter to Tabaka police station under Ob Number xx/xx/5/2021.
9. The Report further documents that vide letter dated February 1, 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 EAO attended court and confirmed she is willing to take up the role of legal guardian. She is the sister to the second applicant and sister-in-law to the 1st Applicant.
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.
  - (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.
  - (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 56 years and 47 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.
- (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;'

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 11, 2022 and order as follows:

- i. The Applicants FJLOO and CWO be allowed to adopt Baby GN.
- ii. The Child to be known as GLIO.
- 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 March 12, 2021 in Kisii.
- v. EAO 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 Guardian Ad litem is discharged.

**SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 30<sup>th</sup> DAY OF June,2023.**

**P M NYAUNDI**

**HIGH COURT JUDGE**

**In the presence of**

M/s Kimenyi for the Applicants

1<sup>ST</sup> and 2<sup>ND</sup> Applicant

Court Assistant Karani

