



**In re P alias JPM (Minor) (Adoption Cause E140 of 2021)
[2023] KEHC 19505 (KLR) (Family) (26 June 2023) (Judgment)**

Neutral citation: [2023] KEHC 19505 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E140 OF 2021
EKO OGOLA, J
JUNE 26, 2023
IN THE MATTER OF THE CHILDREN ACT, 2022
AND
IN THE MATTER OF ADOPTION OF BABY P ALIAS JPK**

IN THE MATTER OF

NMW 1ST APPLICANT

EWM 2ND APPLICANT

JUDGMENT

1. Before this Court is the Amended Originating Summons dated December 9, 2021 by which the applicants seek the following orders: -
 1. That the Applicants be authorized to adopt P alias JPM (minor) to be known as such JPM.
 2. That CNG be appointed as the legal guardian of the child in the event of the death or incapacity of the Applicants before she is of full age and self-reliant
 3. That the Registrar-General be directed to enter in the Adopted Children Registry an entry recording the Adoption herein
 4. That the child be presumed to be a Kenyan Citizen by birth and be issued with a Certificate of birth
 5. That the court be pleased to make any further orders it deems necessary.
2. The Summons was supported by the statement of even date sworn by the applicants. The matter was canvassed by way of viva voce evidence on the online platform.



3. PW1 NMW the 1st Applicant testified that he lives in Ruai and does transport and lands businesses. PW1 is married to EWM the 2nd Applicant and they do not have children of their own. PW1 testified that he earns about Kshs 100,000/- per month therefore he is capable of taking care of the child who has been in his custody for four (4) years. PW1 understands that the child will be entitled to inherit his property and his family is in support of the adoption.
4. PW2 was EWM the 2nd Applicant who testified that she wishes to adopt the child; has enough resources to take care of the child and she is aware that the child will be entitled to inherit her property.
5. PW3 was CNG the intended legal guardian and the 2nd Applicant's younger brother, testified that he works with KDF. PW3 has signed a consent agreeing to be the legal guardian of the child and understands his responsibility as a Legal Guardian.
6. PW4 was PKS the court appointed guardian ad litem has filed a report dated October 26, 2022 recommending the adoption.
7. PW5 was Wamaitha from the Department of Children Services. PW5 has filed a report dated October 11, 2022 which recommends the adoption.

Determination

8. I have carefully considered this application for adoption, the various Affidavits and Reports on record as well as the relevant law. I have also considered the evidence adduced in open court. The preliminary requirements for the making of an Adoption Order are set out in Section 184(1) of the [Children Act, 2022](#) which provides as follows: -

“ 156 (1) A person shall not commence any arrangement for the adoption of a child for the adoption of a child unless the council, in accordance with the rules, has declared the child free for adoption and the child has attained the age of six (6) weeks old.”
9. The subject child was found abandoned at birth in a drainage in Kasarani area on October 17, 2016. The child is now above the six (6) week age limit provided for in law.
10. The child was rescued by good Samaritans who reported the matter to Kamukunji Police Station and recorded vide O.B. 63/17/04/2017. The child was at Mogra Rescue Centre. Thereafter on October 4, 2017 the Nairobi Children's Court vide protection and care case number 527 of 2017 formally committed the child to the said Mogra Rescue Centre. The child was declared free for Adoption as per the Certificate dated March 6, 2019 issued by KKPI Adoption Society. On 10th March, 2019 the child was released into the custody of the Applicants under a Foster Care Agreement. The legal pre-requisites for an adoption order have accordingly been met.
11. The duty of this Court is to analyze the material placed before it and make a determination as to whether the Applicants are suitable adoptive parents. The Applicants are Kenyan citizens as per the attached copies of their National Identity cards marked “6-6a” on the documents supporting the Amended Originating Summons.
12. The Applicants are financially stable as evidenced by bank statements marked “10”. The report by the Guardian ad Litem states that the Applicants are financially stable and in a good position to provide for the needs of the child.
13. The Applicants were examined and found to be physically and mentally fit. Copies of their medical reports are marked “8”. The Applicants have also provided copies of their Certificates of Good



- Conduct marked 9 (i) and 9 (ii) issued by the Kenya Police Service which prove they have no criminal antecedents.
14. The Applicants have appointed CNG as a Legal Guardian of the child. He has signed and file a consent. The letter of consent, and the copy of his Identity Card have been provided.
15. Based on the foregoing I am satisfied that the applicants are suitable adoptive parents.
16. Article 14 of the [Constitution of Kenya, 2010](#) deals with issue of Citizenship. Article 14(4) provides as follows:
- “(4) A child found in Kenya who is, or appears to be less than eight years of age and whose nationality and parents are not known, is presumed to be a citizen by birth.”
17. The subject child was abandoned at the Kasarani Area in Nairobi County which is within the republic of Kenya. The Child is therefore a Kenyan Citizen.
18. In deciding upon any matter involving a child, Courts are obliged to give priority to the best interest of the said child. Section 8 (1)(a) of the [Children Act, 2022](#) provides: -
- “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration”.
19. The child has lived with the Applicants in their home since she was about two (2) years six (6) months old up to the present date. There is no doubt that the child has bonded with the Applicants and considers them as her parents.
20. The various reports filed in court all recommend the adoption. I am satisfied that the adoption will serve the best interests of the subject child. Accordingly, I allow this application and make the following orders: -
1. The Applicants NMW and EWM are authorized to adopt the child known as P (minor).
 2. Upon adoption the child will be known as JPM.
 3. The child is declared Kenyan Citizen by birth and is entitled to all the rights and liberties due to a citizen of Kenya.
 4. The Registrar General is directed to make appropriate entries in the Adopted Children’s Register
 5. CNG is appointed as Legal Guardian of the child in the event of the death or incapacity of the Applicant before the child is of age or independent.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26TH DAY OF JUNE, 2023.

E.K. OGOLA

JUDGE

Judgment read and delivered online in absence of the parties

Ms. Gisiele Court Assistant

