



**In re Abandoned Child alias BJB alias J (Child) (Adoption Cause E074 of 2023)
[2023] KEHC 21379 (KLR) (Family) (9 August 2023) (Judgment)**

Neutral citation: [2023] KEHC 21379 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E074 OF 2023
MA ODERO, J
AUGUST 9, 2023
IN THE MATTER OF CHILDREN’S ACT NO 8 OF 2001
AND
IN THE MATTER OF ADOPTION OF BABY
ABANDONED CHILD ALIAS BJB ALIAS J (THE CHILD)**

IN THE MATTER OF

**RNK 1ST APPLICANT
DWN 2ND APPLICANT**

JUDGMENT

1. Before this court is Originating Summons dated 25th April 2023 by which the Applicants RNK and DWN seek the following orders: -

- “1. Spent
- 2. Spent
- 3. That the Applicants RNK and DWN be authorized to adopt BJB to be known as ARM.
- 4. That the child be presumed a Kenyan citizen by birth.
- 5. That the child’s date of birth be 8th September 2019 and the place of birth be Romsambu, Nairobi.
- 6. That the Registrar General be directed to enter the adoption in the Adopted Children Register.



7. That the Director Immigration be authorized to issue the child with a Kenyan passport.
 8. That the 1st Applicant's brother, DWK and his wife, EWM, be appointed the legal guardians of the child in the event of the death or incapacity of the Applicants before the child is of age or independent.”
2. The application was supported by the statement of even date sworn by the Applicants. The matter was canvassed by way of viva voce evidence on the virtual platform.
 3. The Applicants are a couple who got married to each other in September 2004. They have no biological children. They now wish to adopt the Subject Child in order to expand their family.
 4. The Applicants both understand the legal implications of an adoption order. They undertake to accord to the Subject Child all rights due to a biological child including the right to inherit.

Analysis and Determination

5. I have carefully considered this application for adoption, the evidence adduced in support thereof as well as the various reports in court. The prerequisites which must be met before an adoption order can be made are set out in Section 184 (1) (a) and (b) of the Children's Act 2022 as follows: -

“

“(1) A person shall not commence any arrangements for the adoption of a child unless—

- (a) the Council, in accordance with the rules, has declared the child free for adoption; and
- (b) the child has attained the age of six weeks.”

6. The Subject Child was born on 8th September 2019. He is therefore now aged three (3) years old and is above the six (6) weeks age limit provided for in the law.
7. Buckner Kenya Adoption Services which is a registered adoption agency have annexed to their report a copy of their Certificate Serial Number xxxx dated 6th April 2022 declaring the child Free for Adoption. (Annexure ‘RDN-6’). I am satisfied that the legal prerequisites for an adoption order have been met.
8. The duty of the court is to analyze the evidence on record to determine whether the Applicants are suitable adoptive parents. The Applicants are both Kenyan citizens as evidenced by the annexed copies of their National Identity Cards (Annexure ‘RDN-8’).
9. The Applicants are a married couple. They solemnized their marriage on 25th September 2004 at the Full Gospel Churches of Kenya in [particulars withheld], Thika. Annexed to the summons is a copy of their Marriage Certificate Serial No. xxxx (Annexure ‘RDN-9’).
10. The Applicants are both in gainful employment. The 1st Applicant works as a Constructor whilst the 2nd Applicant works in cosmetics. The 1st Applicant has annexed copies of his Bank Statements for an account held at Equity Bank (Annexure ‘RDN-10’). I am satisfied that the Applicants are financially stable and have the capacity to provide for the needs of the child.



11. The Applicants were both examined by a doctor and were found to be Physically and mentally fit. They have each annexed copies of Clearance Certificates issued to them by the Directorate of Criminal Investigations (Annexure 'RDN-12').
12. The Applicants have appointed the brother of the 1st Applicant together with his wife as the legal guardians for the child. The proposed legal guardians DWK and EWM have signed a letter of consent dated 23rd August 2021 indicating their willingness to be appointed as legal guardian for the child (Annexure 'RDN-14'). All in all, I am satisfied that the Applicants is are suitable adoptive parents.
13. The Subject Child was abandoned at [Particulars Withheld] on 15th November 2020. A Good Samaritan rescued the baby and reported the matter at Kariobangi Police Station vide OB xxxx. The child was immediately taken to hospital for medical attention.
14. On 6th January 2021 the Nairobi Children's Court committed the child to Rehema PEFA Home for care and attention. (Annexure 'RDN-4'). Thereafter on 11th July 2022 the child was released into the custody of the Applicants under a Foster Care Agreement.
15. Article 14 (4) of the Constitution of Kenya 2010 provides that:-

“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 of Kenya.”
16. The Subject Child was abandoned at birth at [Particulars Withheld] within the Republic of Kenya. He is therefore presumed to be a citizen of Kenya by birth.
17. Efforts to trace the biological mother and/or relatives of the child have borne no fruit. To date no person has come forward to claim the child. A final Police Letter dated 3rd March 2022 is annexed to the summons (Annexure 'RDN-5').
18. Given the fact of his abandonment there exists no known person from whom consent for this adoption can be sought and/or obtained. In the circumstances, I waive the requirement for consent of in line with section 187(1) Children Act 2022.
19. In deciding upon any matter involving a child, courts are obliged to give priority to the best interests of the said child. Section 8 (1) of the Children Act 2022 provides: -

“(8). (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;” (own emphasis)
20. This is a child who was abandoned at birth. He faced an uncertain future living in various Childrens Homes and other similar institutions. This adoption allows the child the opportunity to be raised in a loving and stable home environment.
21. The Child has lived with the Applicants in their home since July 2022. He has undoubtedly bonded with the Applicants and their children. I was able to see the child online. He was a healthy boy who confidently told the court that he attends [particulars withheld] School and is in Blue Class. He also said his teacher is called D and his friend is C.



22. A Home visit was conducted by the Childrens Officer on 23rd June 2023. The Applicants reside in a three bedroomed house in Ndururumo. The home is in a secure compound with adequate space and facilities for the child. The Applicants have employed a Nanny to assist in caring for the child.
23. I have perused the reports prepared by the Adoption Agency, the Guardian Ad Litem and the Director Children Services. All three reports were positive and recommend the adoption.
24. Finally, I am satisfied that this adoption serves the best interests of the child. Accordingly, I allow this application and make the following orders:-
 - 1) The Applicants RNK and DWN are authorized to adopt the child known as BJB.
 - 2) Upon adoption, the child shall be known as ABR.
 - 3) The child is presumed to be a Kenyan citizen by birth and is entitled to all rights and privileges in respect thereto.
 - 4) The Registrar General is directed to make relevant entry in the Adopted Children's Register.
 - 5) DWK and EWM are appointed as the legal guardians for the child.

DATED IN NAIROBI THIS 9TH DAY OF AUGUST, 2023.

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MAUREEN A. ODERO

JUDGE

