



REPUBLIC OF KENYA



KENYA LAW
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**In re Baby ZE (Adoption Cause E005 of 2022)
[2023] KEHC 27291 (KLR) (3 August 2023) (Judgment)**

Neutral citation: [2023] KEHC 27291 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAJIADO
ADOPTION CAUSE E005 OF 2022
SN MUTUKU, J
AUGUST 3, 2023
IN THE MATTER OF THE CHILDRENS ACT
(ACT NO. 8 OF 2001)
AND
IN THE MATTER OF BABY ZE AND IN THE
MATTER OF AN APPLICATION FOR ADOPTION**

IN THE MATTER OF

JKG APPLICANT

JUDGMENT

The Application

1. JKG, the Applicant, has filed an Originating Summons (OS) on 21st October 2022 dated 28th September 2022 anchored on various provisions of the Childrens Act and the Interpretation and General Provisions Act, the Citizenship and Immigration Act and the Constitution of Kenya, as shown on the face of the OS, seeking the following orders:
 - i. That the Applicant JKG be allowed to adopt the child currently identified as Baby ZE.
 - ii. That henceforth the child be renamed as ENK.
 - iii. That DMG and LMO be appointed as Legal Guardians of the child in the event that the Applicant herein is incapacitated or in any way unable to discharge her parental obligations.
 - iv. That the Guardian *ad Litem* be discharged.
 - v. That the Registrar General be directed to make the appropriate entries in the Adopted Children's Register.
 - vi. That this court do issue such further orders as are in the interest of justice.



2. In support of the OS, the Applicant has filed a statement dated 28th September 2022, together with an affidavit that was filed on 21st October 2022 explaining the circumstances surrounding the child.
3. I have read the pleadings and the statement. I have noted that Baby ZE was born on 11th July 2016. She was found abandoned on 14th July 2016 at Kenyatta National Hospital. At the time, she was approximately 3 days old. The matter was reported at Kenyatta Police Post and booked under OB xx/14/07/16. The report of the abandonment was made to Provincial Headquarters, Department of Children Services which placed the child at Mahali Pa Maisha Infant Rescue Centre (MPM Home), a Charitable Childrens Institute, for temporary care and custody pending investigations.
4. The record shows that through a committal report dated 5th December 2016 the child was committed to MPM Home by the Principal Magistrate, Ngong, in Protection & Care Case No. 59 of 2016. After this case file could not be traced, the child was committed again under Protection & Care Case No. 43 of 2019. She was also put on post exposure treatment for HIV after the tests showed that she was exposed to the virus.
5. Upon completion of investigations by the police, no one came forward to claim the child as shown in the police final letter dated 26th January 2017. The child was consequently declared free for adoption on 22nd February 2017 by the Buckner Kenya Adoption Services Case Committee as shown in the Certificate of Declaring a Child Free for Adoption.
6. The Applicant is a Kenyan citizen aged 50 years. She is separated from JW in 2003 with whom she had four children: KW, aged 28 years, DM aged 26 years, EM aged 24 years and DM aged 20 years. I have seen their respective birth certificates and consents to the adoption. The Applicant is a Christian and described her motivation to adopt the child as arising from her work with the children in need of a home and her desire to open her home for a needy child.
7. She is employed and currently works at Mahali pa Maisha as a cook. She states that she is capable of providing for the child financially and that she is both physically and emotionally fit to adopt the child. She has attached police clearance certificate dated 10th February 2022 to show that she has never been convicted of any criminal offence.
8. The Applicant has proposed DMG and LMO, her son and his wife, as legal Guardians. She has stated that the two are fit, able and willing to act in the capacity of legal guardians and have consented to be so appointed through letters of consent dated 17th June, 2021.

Reports

9. WNK was appointed by this court as Guardian *Ad Litem* on 30th January 2023. The court further directed the Guardian Ad Litem and the Director of Children Services to file their respective reports on the suitability of the Applicant to adopt the child within 45 days. Both reports have been filed.
10. The Guardian *Ad Litem* report is dated 1st March, 2023. It was filed on 28th March, 2023. I have read the report. It confirms the marital status of the Applicant and that she is a mother of four adult biological children. It confirms that the Applicant is capable of providing for the child as she works as a cook at Mahali pa Maisha Infant Rescue Centre; that she lives in a 2 bedroomed rental house in Kitengela with ample play area and security; that she has appointed her second born son and daughter in law to be legal guardians of the child and that the Applicant has no criminal record. The Report is positive and recommends that the Applicant be allowed to adopt the child.
11. The report from the Director of Children Services is dated 23rd March, 2023. It is prepared by Dr. Samwel Manoti Masese, County Coordinator Children Services. The report recommends that the



Applicant has met the prerequisites for adoption as provided in section 185 and 186(1)(2)(a) of the Children's Act of 2022. The report also recommends that the Applicants be granted the orders sought and be allowed to adopt the child as she has shown her capability to do the same.

Analysis and determination

12. The law under section 185(1) (2) of the Children Act (No. 29 of 2022) provides that: -
 1. Any child who is resident within Kenya may be adopted whether or not the child is a Kenyan citizen, or was born in Kenya.
 2. Without prejudice to the generality of subsection (1), no Court may entertain an application for an adoption order in respect of a child unless—
 - (a) the child concerned has been in the continuous care and control of the applicant within Kenya for a period of three consecutive months preceding the filing of the application; and
 - (b) the application for an adoption order is supported by a report made by a duly registered adoption society recommending that an adoption order be made.
13. From the records in the court file, the Applicant has had continuous care and control of the child for a period of three consecutive months preceding the filing of their application. The child was placed with the Applicant on 21st December, 2021 and has been under her care and protection ever since.
14. The Applicant is aged 50 years thereby complying with the age requirement. The reports filed by the Guardian *Ad Litem* and the Director of Children Services give good recommendations as to the capability of the Applicant to adopt the child.
15. The law also provides under Section 187 1(a) and 2(a) of the Children's Act that:
 1. The Court may dispense with any consent required under section 186(8) paragraphs (a), (b) and (c) if the Court is satisfied that—
 - (a) in the case of the parent or guardian of the child, the parent or guardian has abandoned, neglected, persistently failed to maintain or persistently ill-treated the child;
 - (2) Without prejudice to the generality of subsection (1)(a) –
 - (a) abandonment shall be presumed in any case where the child appears to have been abandoned at birth, or if the person or, where the institution having care and possession of the child, that institution has lost all contact with a parent or guardian of the child for a period exceeding one year; and
16. The record shows that no one claimed the child and by a final letter from OCPP Kenyatta Police Post, dated 26th January, 2017, the police confirmed that nobody had come forward to claim the child. The child was declared free for adoption vide a Certificate dated 22nd February, 2017 issued by Buckner Kenya Adoption Services.
17. The Applicant has proposed DMG and LMO, the Applicant's son and daughter in-law respectively, as legal guardians. The two have given their consent for appointment as Legal Guardian vide their signed letter of consent dated 17th June, 2021.
18. The paramount consideration in matters dealing with a child under our laws is the best interests of the child as enshrined under Article 53(2) of the Constitution and Section 4(2) and (3) of the Children's



Act as well as Article 3 of the UN Convention on the Rights of the Child (CRC), which Kenya ratified on 30th July 1990.

19. I have considered that the child was abandoned. The matter was investigated by the police, whose attempt to locate any relative of the child did not yield any results. In my considered view, it will be in the best interest of the child to give her a home where she can be taken care of.
20. I have satisfied myself, in these adoption proceedings, that the law under sections 183 to 188, all inclusive, 194 and 195 of the Children Act have been complied with. For this reason, I hereby issue an adoption order in the following terms:
 - i. That the Applicant, JKG, is hereby allowed to adopt Baby ZE.
 - ii. That Baby ZE shall henceforth be known as ENK.
 - iii. That DMG and LMO are hereby appointed as Legal Guardians of ENK.
 - iv. That the Registrar General is hereby directed to make appropriate entries in the Adopted Children's Register.
 - v. That WK is hereby discharged from Guardian *Ad Litem* duties.
21. Orders shall issue accordingly.

DATED, SIGNED AND DELIVERED THIS 3RD DAY OF AUGUST 2023.

S. N. MUTUKU

JUDGE

