



**In re Baby EN (Child) (Adoption Cause E171 of 2022)
[2023] KEHC 21698 (KLR) (Family) (4 August 2023) (Judgment)**

Neutral citation: [2023] KEHC 21698 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E171 OF 2022
MA ODERO, J
AUGUST 4, 2023
IN THE MATTER OF THE CHILDREN'S ACT 2022
IN THE MATTER OF ABANDONED CHILD UNKNOWN
AKA BABY EN (THE CHILD)
AND
IN THE MATTER OF AN APPLICATION FOR
ADOPTION**

IN THE MATTER OF

**MJMC 1ST APPLICANT
EKM 2ND APPLICANT**

JUDGMENT

1. Before this court is Originating Summons dated August 16, 2022 by which the Applicants MJMC and EKM seek the following orders: -
 1. That MJMC and EKM of Kenya National Identity Card Number xxxx and xxxx respectively be authorized to adopt the child; Abandoned Child Unknown aka Baby EN who is a Kenyan Citizen presumed to be born on the 8th day of October 2020.
 2. That upon adoption, the child be known as TM.
 3. That ESM of Kenyan National Identity Card Number xxxx be appointed as the Legal Guardian of the child; Abandoned Child Unknown AKA Baby EN.



4. That the Registrar General be directed to enter this adoption into the Register of Adoptions and a subsequent Birth Certificate do issue by the Registrar of appropriate entries into the Adopted Children Register.
5. That the Director of Immigration be authorized to issue the child; Abandoned Child Unknown aka Baby EN with a Kenyan passport.”
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 May 2013. Their union has been blessed with two (2) biological children – sons who are now aged 6 years old and 4 years old. 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 October 9, 2020. A copy of her Birth Certificate serial Number xxxx She is therefore now aged two (3) years old and is above the six (6) weeks age limit provided for in the law.
7. Change Trust Adoption Agency which is a registered adoption agency have annexed to their report a copy of their Certificate Serial Number xxxx dated March 18, 2022 declaring the child Free for Adoption. 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 (Annexture ‘MJE-2’).
9. The Applicants are a married couple. They got married on May 3, 2013 at the Nairobi Undenominational Church. Annexed to the summons is a copy of their Marriage Certificate Serial No. xxxx (Annexture ‘MJE-3’).
10. The Applicants marriage was blessed with two children, sons who are now aged Six (6) years old and Four (4) years old. Copies of their birth certificates appear as Annexture ‘MUE ‘5’ to the summons. The couple now wish to adopt another child in order to expand their family and out of their desire to provide a needy child with a home.
11. The Applicants are both in gainful employment. The 1st Applicant is a self-employed Architect whilst the 2nd Applicant is a Lawyer employed by the [particulars withheld]. The 1st Applicant has annexed copies of his Bank Statements for an account held at NCBA Bank and the 2nd Applicant has annexed copies of her pay slips (Annexture ‘MJE-4’).



12. The couple have also annexed a copy of a Title Deed for property they own in Mavoko Town. I am satisfied that the Applicants are financially stable and have the capacity to provide for the needs of the child.
13. 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 ‘MJE-8’).
14. The Applicants have appointed the sister of the 2nd Applicant as the legal guardian for the child. The proposed legal guardian ESM has signed a letter of consent dated August 16, 2022 indicating her willingness to be appointed as legal guardian for the child.
16. The Applicants are not new to parenting. They already have two sons. All in all, I am satisfied that the Applicants are suitable adoptive parents.
17. The Subject Child was abandoned around Central Memorial Hospital area in Thika. Two Good Samaritans rescued the baby and reported the matter at Thika Police Station vide OB Number 9 of October 9, 2020.
18. In May 2021 the Thika Childrens’ Court committed the child to New Life Home Trust for care and attention. Thereafter on April 1, 2022 the child was released into the custody of the Applicants under a Foster Care Agreement.
19. 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.”
20. The Subject Child was abandoned at birth in Thika, Kiambu County within the Republic of Kenya. She is therefore presumed to be a citizen of Kenya by birth.
21. 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 June 4, 2021 is annexed to the summons (Annexure ‘MJE-7’).
22. Given the fact of her 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.
23. 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)
24. This is a child who was abandoned at only two (2) days old. She 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.



25. The Child has lived with the Applicants in their home since April 2022. She has undoubtedly bonded with the Applicants and their children. I was able to see the child online. She was a healthy and calm toddler who was waving at the court.
26. A Home visit was conducted by the Childrens Officer. The Applicants reside in a four bedroomed Apartment along Naivasha Road. The home is in a secure compound with adequate space and facilities for the child. The Applicants have engaged a Nanny to assist in caring for the child.
27. 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.
28. 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 MJMC and EKM are authorized to adopt the child known as Baby EN.
 2. Upon adoption, the child shall be known as TM and her date of birth be the 8th day of October 2020.
 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. ESM is appointed is legal guardian for the child.

DATED IN NAIROBI THIS 4TH DAY OF AUGUST, 2023.

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MAUREEN A. ODERO
JUDGE

