



REPUBLIC OF KENYA



**In re Baby JI (The child) (Adoption Cause E071 of 2023)  
[2023] KEHC 24580 (KLR) (Family) (29 September 2023) (Judgment)**

Neutral citation: [2023] KEHC 24580 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
ADOPTION CAUSE E071 OF 2023  
MA ODERO, J  
SEPTEMBER 29, 2023  
IN THE MATTER OF CHILDREN'S ACT NO 8 OF 2001  
AND  
IN THE MATTER OF ADOPTION OF BABY JI (THE CHILD)**

**IN THE MATTER OF  
MSM ..... APPLICANT**

**JUDGMENT**

1. Before this court is Originating Summons dated 3<sup>rd</sup> April 2023 by which the Applicants seek the following orders:-
  - “ 1. That the Applicant, MSM , be allowed to adopt the child currently identified as Baby JI .
  2. That henceforth, the child be renamed JMS.
  3. That the child's date and place of birth be declared to be 15<sup>th</sup> March 2021 in Vihiga County.
  4. That the child be presumed to be a Kenyan citizen by birth; and consequently, entitled to all the rights and benefits in respect thereof.
  5. That DOO and LA be appointed as Legal guardians of the child, in the event that the Applicant herein are incapacitated or in any way unable to discharge his parental obligations.
  6. Spent.



7. That the Registrar-General be directed to make the appropriate entries in the Adopted Children's Register.”
2. The Application was supported by the Affidavit of even date sworn by the Applicants. The matter was canvassed by way of vive voce evidence on the virtual platform.
3. The Applicant MSM is a sole Applicant who does not have any biological children of his own.
4. He wishes to expand his family by adopting the subject child. The Applicant confirms that he understands and accepts the legal implications of an adoption order. He undertakes to accord to the Subject child all the rights due to a biological child including the right to inherit.

### **Analysis and Determination**

5. I have considered the application for adoption, the evidence adduced in support thereof as well as the various reports filed in court.
6. The prerequisites for before an adoption order can be made are set out in section 184 (1) (a) and (b) of the *Children's Act* 2022: -
  - “(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.”
7. The subject child was born on 15<sup>th</sup> March 2021. The child is now aged three (3) years old and is above the six (6) week age limit provided for in law.
8. Little Angels Network, which is a registered Adoption Agency have annexed to their report a copy of their Certificate Serial Number xxxx dated 1<sup>st</sup> December 2021 declaring the child Free for Adoption (Annexure 'MS25'). I am therefore satisfied that all the legal prerequisites for an adoption order have been met.
9. The duty of this court is to analyze the evidence on record to determine whether the Applicant is a suitable adoptive parent. The Applicant is a Kenyan citizen as evidenced by the Annexed copy of his National Identity Card. (Annexure 'MS 3').
10. The Applicant is not married. However, he had been cohabiting with one Judith Anyango for two years but they are now separated. He does not have any biological children of his own. He now wishes to adopt a child.
11. The Applicant is gainfully employed. He manages his own business Mosdef Brands. He has annexed to the summons copies of his bank statements. (Annexure 'MS 6'). All in all, I am satisfied that the Applicant is financially secure.
12. The Applicant was examined by a doctor and was found to be mentally and physically fit. (Annexure 'MS 7'). The Applicant has annexed to the summons copy of Clearance Certificates issued to him by the Directorate of Criminal Investigations confirming that he has no criminal record (Annexure 'MS 8').



13. The Applicant's family is aware of and support his intention to adopt the subject child. Annexed to the summons are letters of support from the Applicant's sisters. (Annexure 'MS 10A& 10B').
14. The Applicant has appointed his close confidants as the legal Guardians for the child. The proposed legal guardians DOO and LA have each signed a consent dated 23<sup>rd</sup> March 2021 confirming their willingness to act as legal Guardians for the child in the event of the death and/or incapacity of the Applicant.
15. Based on the material presented before this court I am satisfied that the Applicant is a suitable adoptive parent.
16. The subject child who was born on or about 15<sup>th</sup> March 2021 was found abandoned aged about 2 months old on 22<sup>nd</sup> November 2019 at (Particulars withheld) area of Vihiga County. A good Samaritan rescued the child and reported the abandonment at Vihiga Police Station vide OB Number xxxx. The child was taken to Vihiga County Referral Hospital for medical assessment and was later committed by the Vihiga Childrens Court to Springs of Life Children's Home as a child in need of care and Protection. On 28<sup>th</sup> December 2021 the child was released into the custody of the Applicant under a Foster Care Agreement.
17. Article 14 (4) of *the Constitution* of Kenya 2010 provides that: -
  - "(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."
18. The Subject child was found abandoned at the age of two (2) months within Vihiga County in the Republic of Kenya. Efforts by police 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 25<sup>th</sup> November 2021 confirms this fact. I therefore declare the child to be a citizen of Kenya by birth.
19. 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 do waive the requirement for consent in line with Section 187(1) (a) *Children Act* 2022.
20. 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). In all actions concerning children, whether undertaken by public or
  - (1) 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)
21. This is a child who was abandoned shortly after his birth. He faced an uncertain future living in children Homes and other similar institutions. This adoption provides the child with the opportunity to be raised in a stable and loving home environment.
22. The child has been living with the Applicant in his home for close to two (2) years. He has undoubtedly bonded with the Applicant whom he views as his parent. The child knows no other family. I was able to see the child online. He was a healthy calm toddler, sitting comfortably on the lap of the Applicant.



23. I note that this is a situation where a sole male Applicant is seeking to adopt a male child. I am mindful of the fact that Section 186 (4) of the Children Act 2022 prohibits the making of an adoption order in favour of a sole male Applicant unless the Applicant is a blood relative of the child.
24. However, the previous (repealed) 2001 Children Act allowed for the adoption of a male child by a sole male Applicant.
25. The new Children Act 2022 came into force on 26<sup>th</sup> July 2022. This Application for adoption was filed on 3<sup>rd</sup> April 2023. Thus this application for adoption was filed almost one (1) year after the new Act came into force.
26. Notwithstanding the above provisions of law the court is obliged under Section 8(1)(a) of the Children Act to give priority to the “best interest of the child.” This is a young boy who has been in the custody of the Applicant since December 2021 well before the new Act came into force.
27. All reports indicate that the child has bonded with the Applicant whom he views as his father. There is no evidence that the child faces any harm or endangerment from the Applicant.
28. In my view it would be disastrous to remove this child from the only home he knows and return him to an institution. No person has come forward to claim the child. In the circumstances, I find that the best interests of the child are served by leaving him in the only home he knows.
29. A Home visit was conducted by the Children’s Officer. The Applicant resides in a 3 bedroomed house in Gate View Estate, Athi River. He lives with the child and his sister who takes care of the child in his absence. The home was spacious and well-furnished within a secure compound with adequate space for the child to play. The Children Officer noted that the child has bonded very well with the Applicant.
30. I have considered the reports prepared by the Adoption Agency, the Guardian Ad Litem and the Director of Children Services. All three reports were positive and all recommend the adoption.
31. In conclusion, I find that this adoption does serve the best interests of the child. Accordingly, I do allow this application and make the following orders:-
  - 1) The Applicant MSM is authorized to adopt the child currently identified as Baby JI .
  - 2) Upon Adoption the child shall be known as JMS.
  - 3) The child is declared to be a Kenyan citizen by birth and is entitled to all the rights and privileges pursuant thereto.
  - 4) The child’s date and place of birth be declared to be 15<sup>th</sup> March 2021 in Vihiga County.
  - 5) DOO and LA , are appointed as the Legal Guardians of the child.
  - 6) The Registrar General is directed to make relevant entry in the Adopted Children Register.

**DATED IN NAIROBI THIS 29<sup>TH</sup> DAY OF SEPTEMBER, 2023.**

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**MAUREEN A. ODERO**

**JUDGE**

