



**In re RB (Child) (Adoption Cause E195 of 2022)
[2023] KEHC 23247 (KLR) (Family) (29 September 2023) (Judgment)**

Neutral citation: [2023] KEHC 23247 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY**

ADOPTION CAUSE E195 OF 2022

PM NYAUNDI, J

SEPTEMBER 29, 2023

IN THE MATTER OF

JNM APPLICANT

JUDGMENT

1. The Applicant, JNM *vide* Originating Summons dated 4th November 2022 has made an application for the adoption of Baby RB the child herein. The applicant is not married but in a relationship with her fiancé since 2015. She does not have children of her own and is driven by the desire to provide a home and love for the child.
2. The matter proceeded for hearing via *viva voce* evidence on the Teams virtual platform on the 21st of September 2023.
3. The Applicant is Kenyan Citizen and of the Christian faith. She avers that she has the financial means and capability to take care of the Child. The applicant is Chief Operations Officer at [particulars withheld]. She has had custody of the child since 3rd June 2022. She resides in [particulars withheld], Nairobi County. She fully understands the consequences of an adoption order.
4. The child was found abandoned in a pit latrine in the home of [particulars withheld] South Ward, MCA Mr. JPA by his herd's boy named NM of telephone number 070xxxxx40. The matter was reported to [particulars withheld] Police Station and recorded vide Occurrence Book Number 55/7/9/2021. The child was then referred to the [particulars withheld] Kisumu and admitted to the home on 7th September 2021.
5. Thereafter, the children's Court in Vihiga upon the recommendation of The Provincial Children Office in Luanda Sub-County formally committed the child to the home in Protection and Care case number 38 of 2022. The Luanda Police Station in its letter dated 11th May 2022 confirms that it has not received any claim for the child. The adoption Society tried to contact the Good Samaritan, Mr



JPA on his phone number 072xxxxx63 and confirmed that he gave his written statement about the abandonment of the child. The [particulars withheld] Home Trust Kisumu also reported that during the child's stay in the institution, no relative turned up to claim the child.

6. Prior to the hearing of the adoption application, [Particulars withheld] Network prepared and filed a report dated 11th May 2022 and issued a certificate serial No. 002263 declaring the child free for adoption. The Court appointed MKK as Guardian Ad Litem.
7. MKK the Guardian ad litem was present in court, she confirmed to the court that she had visited the applicant's home. The child was well taken care of and the applicant bonded well with the child. She recommends the adoption.
8. An officer of the Department of Children Services, Nyaranga Odundo prepared a report dated 23th March 2023. The report was countersigned by Nancy Waswa. The report established that the child was found by a Good Samaritan on [particulars withheld] 2021. The child had been abandoned in pit latrine in the home of JPA. On [particulars withheld] 2021 at 8.00am, NM of telephone number 07xxxxx40, a herds boy, was going to the latrine in the home of his employer Mr. JPA when he heard the sound of a baby crying from inside the latrine. He immediately went to the house and informed his employer. Mr. JPA and his wife VPA rushed to the latrine and with the help of a flash light they were able to see the baby within latrine. He called the area chief IO who arrived at the scene together with police officers from Ekwanda Police Base. With the assistance of members of the public they were able to rescue the child from the pit latrine.
9. The report further documents that the child was taken to Emuhaya Sub County Hospital for treatment. She was then referred to Vihiga County Referral Hospital for further treatment. She was cared for at the hospital and discharged and released into the care of Mr. and Mrs. JPA on 30th August 2021. The matter was reported to Luanda Police Station and recorded vide Occurrence Book Number 55/7/9/2021. The child was then referred to the [particulars withheld] Kisumu and admitted to the home on 7th September 2021.
10. The children's Court in Vihiga upon the recommendation of The Provincial Children Office in Luanda Sub-County formally committed the child to the home in Protection and Care case number 38 of 2022 into [particulars withheld] for a period of three (3) years. She remained at the institution until she was placed with the applicant on 2nd June 2022.
11. The proposed Legal Guardians CMN and LMM attended court and confirmed they are willing to take up the role of legal guardians. They are the applicant's parents.
12. After carefully assessing the records herein, I am satisfied that the applicant has fulfilled all the legal requirements relating to the Child's adoption. Section 186 of the [Children Act](#), 2022 provides. The court may make an adoption order on application by-
 - (1)
 - (a) Sole applicant; or
 - (b) Two spouses jointly.
 - (2) The court shall not make an adoption order in any case unless-
 - i. The applicant has attained the age of twenty-five years, but is not above the age of sixty-five years; and



- ii. The applicant, or both of the applicants in a joint application, is more than twenty-one years older than the child.
 - (3) The restrictions in subsection (2) shall not apply in any case where a sole applicant or one of the joint applicants is the mother, father, or relative of the child.
13. The Applicant is 46 years.
14. Article 53 of the Constitution of Kenya, 2010 provides the overarching principles which must apply whenever any decision concerning a child is to be considered. It states:

A Child's Best interests are of paramount importance in every matter concerning the child.
15. This principle is restated Under Section 8 of the Children Act, 2022 which provides

Best interests of the child. In all actions concerning children, whether undertaken.

 1. By public or private social welfare institutions, courts of the law, administrative authorities, or legislative bodies-
 - a. The best interests of the child shall be the primary consideration;
 - b. The best interests of the child shall include, but shall not be limited to the considerations set out in the First Schedule.
16. Section 194 (1) (c) of the Act also requires that if the adoption order is made

The order will be in the best interests of the child, having regard to the wishes of the child, depending on the child's age and understanding, and to the ability of the applicant to maintain and educate the child;
17. In view of the foregoing, the court is of the considered view that it is in the child's best interest to be adopted by the Applicants.
18. Accordingly, I allow the prayers sought in the Originating Summons dated 4th November 2022 and order as follows:
 - I. The Applicant JNM be allowed to adopt Baby RB.
 - II. The Child is to be known as NWM
 - III. The Child be presumed to be a Kenyan citizen by birth born on the 25th August 2021
 - IV. CMN and LMM are hereby appointed as legal guardians of the Child
 - V. The Registrar is hereby directed to enter this adoption into the Register of Adopted Children.
 - VI. The Director Immigration is authorized to issue the child with a Kenyan passport
 - VII. The Guardian Ad litem is discharged.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 29TH DAY OF SEPTEMBER, 2023.

P M NYAUNDI

HIGH COURT JUDGE



In the presence of;
Adv. Njenga for the Applicants
Sylvia Court Assistant

