



**In re Baby HW (Adoption Cause E104 of 2023)
[2023] KEHC 24829 (KLR) (Family) (27 October 2023) (Judgment)**

Neutral citation: [2023] KEHC 24829 (KLR)

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

FAMILY

ADOPTION CAUSE E104 OF 2023

PM NYAUNDI, J

OCTOBER 27, 2023

IN THE MATTER OF THE CHILDREN’S ACT NO. 29 OF

2022

AND

IN THE MATTER OF BABY HW

AND

AND IN THE MATTER OF AN APPLICATION FOR

ADOPTION

BY

IN THE MATTER OF

JWW APPLICANT

JUDGMENT

1. The Applicant, JWW *vide* Originating Summons dated 25th May 2023 has made an application for the adoption of BABY HW child herein. The applicant is not married. She does not have children of her own and is driven by the desire to assist children later in life. Her need to have a family coupled with her thoughts of being there for the orphans, increased her urge to adopt. From the time she brought the child home, being able to provide for her and be her mother makes her happy.
2. The matter proceeded for hearing via *viva voce* evidence on the Teams virtual platform on the 12th of October 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 office Administrator at [Particulars Withheld]



- Company. She has had custody of the child since 17th October 2022. She resides in Particulars Withheld] Estate-Langata. She fully understands the consequences of an adoption order.
4. The child was born on December 14, 2021. However, the baby was abandoned at the New Born Unit of Kerugoya County Referral Hospital, by the mother IWK on December xx, 2021. The matter was reported at Kerugoya Police Station and recorded vide Occurrence Book Number 56/17/12/2021. The child was then admitted to the New Life Home Trust Nyeri and admitted on 17th March 2022.
 5. On 17th March 2022, Baby HW was committed to New Life Home Trust for care and protection through the children's Court at Kerugoya, Protection and Care case number MCP & CCO E003 of 2022. On 8th September 2022, Kerugoya Police Post issued a final police letter indicating that nobody had claimed the child. In an attempt to do tracing, an officer from New Life Home Trust contacted KK, next of kin (IWK's husband) alleged father to Baby H of mobile number 0768XXXX95/079XXXX902 on September 8, 2022, but the phone numbers were not reachable.
 6. On September 20, 2022, an officer from Buckner Kenya Adoption Services called KK, the alleged next of kin on 0768XXXX95/079XXXX902, but the numbers were not reachable. The New life Home Trust further reports that during the child's stay in the institution, no relative turned up to claim the child, neither have they received any information from the police department concerned regarding any claimants.
 7. Baby HW remained in the care of New Life Home Trust Nyeri until October 17, 2022 when she was placed in the care of Ms JWW. She has continued to enjoy the parental love, care and good nurturing accorded to her by the applicant.
 8. Prior to the hearing of the adoption application, Buckner Kenya Adoption Services prepared and filed a report dated 18th February 2022 and issued a certificate serial No. 0xxx declaring the child free for adoption. The Court appointed Guardian ad litem DO.
 9. DO the Guadian ad litem was present in court, and presented her report dated September 27, 2023. 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.
 10. An officer of the Department of Children Services, Winfred Ikinya was present in court and recommended the adoption. She prepared a report dated 15th August 2023. The report was countersigned by Nancy Waswa. The report established that the child was born on 14th December 2021 at Kerugoya District Hospital to one IWK who absconded the hospital on 17th December 2021 at around 3 am. The matter was reported at Kerugoya Police Station by security guard at the hospital on James Mwangi and was recorded vide Occurrence Book Number 56/17/12/2021. The baby remained at the new born unit until 17th March 2022 when she was admitted at New Life Home Trust Nyeri. Following a request by the Children officer in Kerugoya via children officer's report dated 14th March 2022, the child was committed to the home for care and protection vide Protection and care file number E003 of 2022. The police, dated 8th September 2022 indicating that their efforts were unsuccessful.
 11. The report further documents that the child having been abandoned at birth and remaining unclaimed was declared free for adoption by Buckner Adoption Services on 22 September 2022 and a freeing certificate serialized as 0592 issued. The child was subsequently placed with the applicant for foster care pending adoption on 17th October 2022 and has been in her care to date.
 12. The proposed Legal Guardians AWW AND FWK attended court and confirmed they are willing to take up the role of legal guardians. They are the applicant's sister and brother in law.



13. 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.

14. The Applicant is 44 years.

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.

14. 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.

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;

14. 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.

15. Accordingly, I allow the prayers sought in the originating summons dated May 25, 2023 and order as follows:

- I. The applicant JWW be allowed to adopt BABY HW.
- II. The child is to be known as HKW.
- III. The Child be presumed to be a Kenyan citizen by birth born on the December 14, 2021 Kerugoya District Hospital.
- IV. AWW and FWK are hereby appointed as legal guardians of 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 27TH DAY OF OCTOBER, 2023.

P. NYAUNDI

JUDGE

In the presence of;

Ms. Kimeny for Applicant

Sylvia Court Assistance

