



**In re ND (Minor) (Adoption Cause E103 of 2023)
[2023] KEHC 24886 (KLR) (Family) (27 October 2023) (Judgment)**

Neutral citation: [2023] KEHC 24886 (KLR)

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

ADOPTION CAUSE E103 OF 2023

PM NYAUNDI, J

OCTOBER 27, 2023

IN THE MATTER OF

JNM 1ST APPLICANT

VKM 2ND APPLICANT

JUDGMENT

1. The Applicants, JNM (“the 1st Applicant”) and VKM (“the 2nd Applicant”), filed their Chamber Summons and their Affidavit in support of their application dated 5th June, 2023 seeking to be allowed by this Court to adopt Baby ND (hereafter “the child”), SMN be appointed as the Guardian ad litem and Director of Children’s Services to compile a requisite report on the Applicants suitability to adopt the child.
2. The Applicants are husband and wife. They got married in 2005 and celebrated their marriage on 28th May, 2011 under the African Christian Marriage and Divorce Act (now repealed). They are both business persons. The Applicants have not been blessed with any biological children hence reasons for adoption.
3. Baby ND is the subject of the present adoption proceedings. He was born to CWM of ID No. xxxx on 27th May, 2021 at Kandara Hospital. CWM averred that she wanted to give away the child for adoption and declined to give the details of the child’s father.
4. A report on the matter was made to Kandara Police Station and the child was recorded as an abandoned child vide OB No. 18/22/8/2021 by Kandara Social Worker for purposes of investigation.
5. The child was then taken to Maragua Sub-County Hospital where she was admitted at the hospital’s New Born Unit on IP Number 034704 for medical attention.



6. The Magistrate Kandara Children's Court, in accordance with Section 144 of the *Children Act*, committed the child to the New Life Home Trust under Protection and Care Case Number 9/2021.
7. The child was placed in the custody of the Applicants on 14th January, 2022 for mandatory bonding prior to adoption. She has since then been in the continuous custody and care of the Applicants.
8. According to correspondences and relevant statutory authorities the mother offered the child for adoption stating that she had nothing to do with the child, thus prompting this Court to dispense with the consent of the child's biological mother to the proposed adoption of the child by the Applicants.
9. The Adoption Society, Change Trust, issued a certificate declaring the child free for adoption pursuant to Section 102 of the *Children Act* 2022. The said freeing certificate is No. xxxx and the same is dated 3rd December, 2021.
10. In an application filed on 5th June 2013, the Applicants sought among others, orders from this Court that SMN the guardian ad litem to file reports in 40 days and that the Director of Children's Services be ordered to investigate the suitability of the Applicants to adopt the child and submit a report.
11. Subsequently, before this matter came up for hearing, Change Trust the relevant adoption society, prepared and filed in Court a favourable report in respect of the proposed adoption of the child by both Applicants. Another report in respect of the proposed adoption of the child by the Applicants was prepared by the Director of Children's Services, and this report was similarly in favour of the proposed adoption.
12. The guardian ad litem, SMN also filed the statutory report made under Section 122 of the *Children Act* in which she noted that the proposed adoption of the child by the Applicants would be in the best interests of the child.
13. According to the report by Guardian Ad litem dated 14th August, 2023 the child has bonded well with the Applicants. The Applicants are financially and emotionally capable of providing the child with care, protection and education. The Applicants are of good health. They have no criminal record as evidenced by Police Clearance certificates of the first and second Applicants of serial numbers PCC-xxxx and PCC-xxxx respectively.
14. The Director of the Children's Services established that the Applicants have the financial and emotional capability to provide for the upkeep and education of the child. The Adoption Society recommends this adoption. This Court observed the Applicants with the child in Court and it was evident that in the period that the Applicants have had the custody of the child, the child has bonded well with them. The child considers the Applicants to be her parents.
15. All the statutory reports that have been filed in respect of the proposed adoption of the child by the Applicants have recommended that this Court allows the joint Applicants to adopt the child. This Court has evaluated the facts of this adoption. This is a local adoption. It is evident that the Applicants have fulfilled all the legal requirements relative to the adoption of the child. The consent of the biological mother of the child was dispensed with since the child was abandoned at birth.
16. This Court is alive to the jurisdiction of the High Court vide Article 165 Constitution of Kenya 2010 and Section 183(1) *Children Act* 2022. The Court is conscious of the law; Article 53 *Constitution* of Kenya 2010, Section 8 of *Children Act* 2022 and the *UN Convention on the Rights of the Child* & *African Charter on the Rights & Welfare of the Child* all amplify on the best interests of the child.



Determination

17. On the basis of a careful examination of the documents presented before me as well as the observations made therein, this Court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicants. Hence, this Court allows the Applicants' application.

1. The Applicants, JNM and VKM, are hereby allowed to adopt Baby ND.
2. Henceforth, the child shall be known as IJM II.
3. His date of birth shall be 27th May, 2021. His place of birth shall be Nairobi County.
4. He is presumed to be a citizen of Kenya by birth.
5. SKM and BM are appointed Legal Guardians of the Child
6. This Court directs the Registrar General to duly enter this order in the Adoption Register.
7. I hereby discharge the guardian ad litem.

It is so ordered.

DATED AT NAIROBI THIS 27TH DAY OCTOBER, 2023.

P. NYAUNDI

JUDGE

In presence of: -

Ms. Nyaituga holding brief for Miss Kemunto for Applicants

Sylvia Court Assistance

