



**In re baby JT (Adoption Cause E068 of 2022)
[2023] KEHC 27176 (KLR) (Family) (15 December 2023) (Judgment)**

Neutral citation: [2023] KEHC 27176 (KLR)

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

FAMILY

ADOPTION CAUSE E068 OF 2022

PM NYAUNDI, J

DECEMBER 15, 2023

IN THE MATTER OF THE CHILDRENS ACT

AND

IN THE MATTER OF BABY JT

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION BY JNM AND JNO

IN THE MATTER OF

JNM 1ST APPLICANT

JNO 2ND APPLICANT

JUDGMENT

1. Before this Court is the Originating Summons, Supporting Affidavit, Statement in Support of Application all dated 6th May, 2022 respectively as well as Amended Chamber Summons dated 27th November, 2023 by which the Applicants seeks inter alia that the consent of the biological father of the child attached and the consent of the biological mother be dispensed with. That the Applicants JNM and JNO be authorized to adopt baby JTN. Subsequently, the Registrar General be directed to enter this adoption into the register of Adoptions and issue a Birth Certificate.
2. The matter was canvassed by way of *vive voce* evidence on the virtual platform.
3. The (2nd Applicant) is a sister to GNK the biological father to minor, whom they seek to adopt together with JNM (1st Applicant) hence a kinship adoption provided under Section 193 of the *Children Act* 2022.



4. The Applicants are Kenyan Citizens and holders of National Identity Card Numbers 6****14 and 12****1 respectively. They have been married since 2021. They do not have any children of their own but both have children out of their previous marriage. The (1st Applicant) works as a clerk at [Particulars withheld] Airport and the (2nd Applicant) is a business woman.
5. The Applicants wishes to adopt the baby with the intention to provide for him an opportunity of a strong sense of identity, security, stability and belonging. The Applicants stated that they have lived with the minor since 2015. They also stated that the minor is 16 years old and in form 3 at [Particulars withheld] School. They further stated that they provide for the minor's needs.
6. It's their averment that they understand the legal implications of the Adoption order. They would wish to adopt the child as the parents separated and the whereabouts of the mother are not known and the biological father has remarried.
7. The child (male) who is the subject of the present adoption proceedings was born on 28th April, 2007. He was born to GNK and VMO. The minor's parents separated when he was young and his father married another wife. It is at that point that the 2nd Applicant took the minor together with other children after his father did not have financial ability to raise the minor.
8. Upon an assessment and approval by KKPI Adoption, consent from the biological father of the minor, the minor was declared free for adoption by KKPI Adoption Society Vide a Certificate of freeing Serial Number 8*3 dated 17th January, 2022.
9. The minor was placed in the custody of the Applicants for mandatory bonding prior to adoption where he has since then been in the continuous custody and care of the Applicants.
10. In an amended application, the Applicants sought among others, orders from this Court that MKK be appointed as the child's Guardian *Ad litem*, 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. The Applicants also sought to have the Court appoint INO as the child's legal guardian.
12. On 29th September, 2022 this Court issued an order appointing MKK as the child's guardian ad litem, and further directing the guardian ad litem and the Director of Children's Services to investigate and file their respective reports within 40 days.
13. Pursuant to Section 102 of the *Children Act*, 2022 before this matter came up for hearing, Assistant Director of Children's Services prepared and filed in Court a favourable report in respect of the proposed adoption of the minor by both Applicants. Another report in respect of the proposed adoption of the minor was prepared by KKPI Adoption Society, and this report was similarly in favour of the proposed adoption.
14. The guardian ad litem, MKK, also filed a statutory report in which she noted that the proposed adoption of the child by the Applicants would be in the best interests of the child thus recommended that this Court allows the Applicants to adopt the child.
15. All the statutory reports filed stated that 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 Certificate. This Court has evaluated the facts of this adoption. This is a Kinship adoption. It is evident that the Applicants have fulfilled all the legal requirements relative to the adoption of the child.



16. The consent of the biological mother of the child was dispensed with since the mother got separated with her husband and her whereabouts remain unknown and that separation is likely to be permanent because the child's father has another wife and children. The home visits by the guardian ad litem, the adoption society and the Assistant 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.
17. This Court observed the Applicants with the minor 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 stated that he understood the adoption proceedings and that it meant the Applicants will acquire full parental responsibilities over him where he consented to the Adoption Proceedings.
18. 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

19. 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.
 - I. The Applicants, JNM and JNO are hereby allowed to adopt BABY JTN.
 - II. Henceforth, the child shall be known as JTN.
 - III. His date of birth shall be [Particulars withheld] 2007 and place of Birth is [Particulars withheld]
 - IV. He is presumed to be a citizen of Kenya by birth.
 - V. INO shall be the legal guardian of the child should such eventuality arise.
 - VI. This Court directs the Registrar General to duly enter this order in the Adoption Register and
 - VII. Registrar of Births and Deaths to issue a Birth Certificate to the minor.
 - VIII. The Guardian *Ad litem* is discharged.

It is so ordered.

DELIVERED DATED & SIGNED IN OPEN COURT ON 15TH DECEMBER, 2023.

P. NYAUNDI

JUDGE

In presence of: -

Sylvia Court Assistant

