



**In re Baby HM (Minor) (Adoption Cause 147 of 2021)
[2022] KEHC 3251 (KLR) (Family) (28 April 2022) (Judgment)**

Neutral citation: [2022] KEHC 3251 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE 147 OF 2021
LA ACHODE, J
APRIL 28, 2022
IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2011
IN THE MATTER OF AN APPLICATION FOR THE ADOPTION
OF HM (MINOR)
BY
EWG (APPLICANT)**

JUDGMENT

1. The Applicant moved this court vide Originating Summons dated November 11, 2021 seeking the substantive adoption of HM, a female minor, as a sole female Applicant. The records before court indicate that the Applicant, EWG, is a Kenyan, working as a financial advisor, and professes the Christian faith.
2. The subject minor was found abandoned within [Particulars Withheld] Area of Athi River. Baby HM was rescued by Kalenda Muthusi and Jackson Indimuli on October 23, 2020 at around 1545 hrs, who reported the matter at Athi River Police Station. The case was booked under OB No. xxxx
3. The Police vide wrote to the Director of Mahali Pa Maisha vide letter dated April 26, 2020 requesting the home to take temporary custody of the minor as they conduct investigations into the matter. The police further wrote to the Director of Mahali Pa Maisha vide letter dated April 26, 2021 stating that their attempts to reach the child's mother or her family were unsuccessful. The police also stated that no one had come forth to claim the minor or express any interest in him. The police further observed that it would be in the best interests of the minor if he is cleared for adoption as soon as possible. The minor was then committed to Mahali Pa Maisha vide a court order dated October 29, 2020 by Mavoko Law Courts in Protection and Care Case No. 21 of 2020.



4. The Buckner Adoption Services declared the minor free for adoption vide the certificate of Serial Number 496 dated 30th April, 2021. Consequently, Mahali Pa Maisha Rescue Center placed the minor under the temporary custody of the Applicant vide the Care and Placement dated May 23, 2021.
5. An officer from the Directorate of Children’s Services conducted home visits and prepared and filed a report on January 27, 2022. The officer noted that the Applicant lives with the child, and the child’s nanny in a two-bedroom apartment in [Particulars Withheld] Estate. The report indicates that the environment is conducive for the minor’s growth.
6. The officer noted that the Applicant has built a strong bond with the child, and they related as mother and daughter. The child was healthy, happy, and well-groomed. The Officer recommended the adoption stating that it would be in the minor’s best interest to be adopted by the Applicant.
7. Section 158 (1) of the Children’s Act No. 8 of 2001 provides that an application for adoption by a sole Applicant shall be lawful where the applicant:
 - (a) Has attained the age of 25 years and is at least 21 years older than the child but has not attained the age of 65 years old; or
 - (b) Is a relative of the child; or
 - (c) Is the mother or father of the child.”
8. The Applicant is 48 years old, and is therefore above the age of 21 years, but below 65 years of age. The requirement set out under section 158(1) of the Children’s Act is disjunctive hence the Applicant is within the age bracket stipulated by the law for the adoption to be allowed.
9. The court appointed LWK to act as the Guardian ad litem for the minor vide the order dated December 9, 2021. Maria Ng’endo Mboogo filed an affidavit dated November 3, 2021 vouching for the fitness of the proposed guardian *ad litem*. CNG, the sister of the Applicant, consented vide Affidavit dated October 21, 2021 to be the legal guardian for the minor in the event of incapacitation or death of the Applicant.
10. The court observes that the Applicant has no criminal record as evinced by the Police Clearance Certificate No. PCC-xxxxxxx issued by the Directorate of Criminal Investigation (DCI) on 27th October 2020. Ruaka Uhai Neema Hospital prepared a Medical Report dated 14th January 2021 which indicates that the Applicant is of sound mind and good health.
11. Article 53 of the Constitution of Kenya 2010, provides overarching principles which must apply whenever any decision concerning a child is to be considered. The Constitution of Kenya 2010 categorically provides that:

“ A child’s best interests are of paramount importance in every matter concerning the child.”

This principle finds a firm place in the law in section 4(2) and 4(3) of the Children’s Act No. 8 of 2001 and is echoed by Article 4 of the African Charter on the Rights and Welfare of the Child which provides that:

“ In all actions concerning the child undertaken by any person or authority, the best interests of the child shall be the primary consideration.”



11. From the foregoing, the court is of the considered view that it is in the child's best interest to be adopted by the Applicant. Accordingly, I allow the prayers sought in the Originating Summons dated November 11, 2021 and order as follows:
- i. The Applicant, EWG, be and is hereby allowed to adopt HM (the minor), who shall henceforth be known as HM.
 - ii. The child's date of birth is hereby presumed to be October 23, 2020.
 - iii. The child is presumed to have been born in Kenya and her place of birth shall be Nairobi in accordance with Article 14(4) of the *Constitution of Kenya* 2010.
 - iv. CNG be and is hereby appointed as the legal guardian of the child, in the event of incapacitation or death of the Applicant.
 - v. The Registrar General be and is hereby ordered to enter this order in the adopted Children's Register
 - vi. The Director of Immigration be and is hereby ordered to enter her name in the Adopted Children's Register.
 - vii. The Guardian *ad litem* is hereby discharged.

DATED SIGNED AND DELIVERED IN VIRTUAL COURT THIS 28TH DAY OF APRIL, 2022.

L.A ACHODE

HIGH COURT JUDGE

In the presence of

.....Advocate for the Applicant

