



**In re EW a.k.a LW (Minor) (Adoption Cause E118 of 2021)  
[2022] KEHC 10686 (KLR) (Family) (28 April 2022) (Judgment)**

Neutral citation: [2022] KEHC 10686 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
ADOPTION CAUSE E118 OF 2021  
LA ACHODE, J  
APRIL 28, 2022  
IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001  
IN THE MATTER OF THE APPLICATION FOR THE ADOPTION OF BABY EW A.K.A LW  
(MINOR)**

**IN THE MATTER OF**

**ALS ..... 1<sup>ST</sup> APPLICANT**

**VNL ..... 2<sup>ND</sup> APPLICANT**

**JUDGMENT**

1. The Applicants approached this Court through the Originating Summons dated 25<sup>th</sup> June, 2021 seeking to adopt a female minor known as Baby EW A.K.A L. The Applicants are a married couple who have been in a monogamous marriage since 9<sup>th</sup> September, 2017 as can be seen from the Marriage Certificate of Serial No. XXXX. They are blessed with one biological daughter WWL. The couple has filed a second Application intending to adopt another minor. Those proceedings are in Adoption Cause No. XXX of 2021.
2. The Applicants are both gainfully employed. ALS works for the National Police Service as the OCPD [Particulars withheld] while VNL is employed by the National Police Service and is deployed at the [Particulars withheld]. They both reside in [particulars withheld] and profess the Christian faith.
3. The minor the Applicants wish to adopt was abandoned at birth having been born on 5<sup>th</sup> June, 2018 at the Thika level 5 hospital *vide* IP NO. XXXX. The minor was born to a couple who registered their names as Evalyne Wakio and Patrick Muthie. They abandoned the minor at the hospital after birth. The matter was then reported at the Thika Police Station and recorded as OB NO. XXXX/2018.



4. The minor was committed to Nairobi Rescue Children’s Home on the 5<sup>th</sup> July, 2018 through Protection and Care case No. XXXX2018 by the Thika Magistrate’s Court. She was later transferred to the Orphan Children Centre in Thika by the Chief Magistrate’s Court in Thika on the 21<sup>st</sup> November, 2019 through Protection and Care case No. XXXX2018.
5. On the 12<sup>th</sup> October, 2020 Buckner Kenya Adoption Agency tried to reach the parents through the numbers provided in the hospital documents and could not reach the parents. The agency declared the minor free for adoption on 13<sup>th</sup> November, 2020 and a Certificate of Serial No. XXXX issued. The Applicants entered into a Foster Care Agreement with Buckner Kenya Adoption Agency on the 5<sup>th</sup> March 2020 and on the same day the minor was placed in their continued care where she has been till date.
6. This court appointed CM as the guardian *ad litem* on the 2<sup>nd</sup> December, 2021. She filed a report on this matter dated 25<sup>th</sup> January, 2022. The report indicates that the minor was in a loving home and that she appeared happy. The guardian *ad litem* noted that when the minor was first placed with the Applicants, she was malnourished but was now evidently a healthy baby. She also noted that the child was very empathetic and concerned about those around her. The guardian *ad litem* recommended the adoption of the minor by the Applicants.
7. The Directorate of Children’s Services conducted a home visit with the Applicants and filed a report on 13<sup>th</sup> January, 2022 with this court recommending the adoption of the minor by the Applicants. The report indicates that the Children’s Officer noted that the child had bonded well with the Applicants and their biological daughter and other relatives. Further, that the minor would benefit from the adoption which would enable him to grow and develop in a loving and conducive environment as opposed to living in an institution as an abandoned child. Further that the Applicants have met the statutory requirements for adoption as provided under the *Children’s Act* No. 8 of 2001.
8. This being a local adoption, I am satisfied that the Applicants have fulfilled the requirements of the *Constitution* of Kenya and the *Children’s Act*. The reports before this court also indicate that it is in the best interest of the minor for the adoption to be allowed to enable her to grow and develop in a loving and conducive environment.
9. Article 53(2) of the *Constitution*, provides the overarching principle which must apply whenever any decision concerning a child is to be considered. The said Article 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 interest of the child shall be the primary consideration ”
10. The Applicants are both 53 years old, having been born in 1968. They therefore meet the legal requirement of being older than 25 years and younger than 65 years. They are both 21 years older than the minor they wish to adopt as required by Section 158(1) of the *children’s act*.
11. The applicants are both of sound mind and in good physical condition as demonstrated by the medical report compiled at the Kenyatta National Hospital on the 9<sup>th</sup> October, 2020, as required under Section 158(3)(a) of the *Children’s Act*.



12. The Applicants have no criminal record as demonstrated by the Police Clearance Certificate No. PCC-XXXX and PCC-XXXX respectively, obtained pursuant to Section 158(3)(b) of the Children's Act.
13. The proposed Legal Guardians for this matter are TJM, CKN and WWL which consent is backed by an Affidavit sworn by TJM and CKN on the 20<sup>th</sup> June, 2021. WWL also swore her Affidavit on an even date consenting the appointment as a legal guardian.
14. From the foregoing analysis, this court is of the considered view that is in the best interest of the child to be adopted by the Applicants. Reasons wherefore, I allow the prayers sought in the Originating Summons dated 25<sup>th</sup> June, 2021 and order as follows:
  - i. The Applicants ALS and VNL be and are hereby allowed to adopt Baby EW A.K.A LW, who shall henceforth be known as ATL.
  - ii. Her date of birth shall be 5<sup>th</sup> June, 2018 and her place of birth shall be Thika, in Kiambu County.
  - iii. TJM, CKN and WWL are hereby appointed as the legal guardians in the event that the Applicants die, or are incapacitated by ill health.
  - iv. The Registrar General be and is hereby directed to enter this order in the Adopted Children's Register.
  - v. The Director of Immigration be and is hereby authorized to issue the child with a Kenyan Passport.
  - vi. The guardian *ad litem* be and is hereby discharged.

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

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**L.A ACHODE**

**HIGH COURT JUDGE**

In the presence of..... Advocate for the Applicants

