



**In re of NAM (Baby) (Adoption Cause E081 of 2021)  
[2022] KEHC 2983 (KLR) (Family) (28 April 2022) (Judgment)**

Neutral citation: [2022] KEHC 2983 (KLR)

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

**FAMILY**

**ADOPTION CAUSE E081 OF 2021**

**LA ACHODE, J**

**APRIL 28, 2022**

**N THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001  
IN THE MATTER OF THE APPLICATION FOR THE ADOPTION OF BABY NAM (MINOR)**

**BY**

**VWG AND JMM (APPLICANTS)**

**IN THE MATTER OF**

**VWG & JMM ..... APPLICANT**

**JUDGMENT**

1. The Applicants in this matter approached this court through the Originating Summons dated 12<sup>th</sup> July, 2021 seeking orders to adopt a male child known as Baby NAM. The Applicants are in a monogamous marriage which was solemnized at the Deliverance Church in Westlands as demonstrated by the Marriage Certificate of Serial Number xxxx. The Applicants do not have a biological child of their own. They desire to adopt the child to afford him the right of growing up in a loving and peaceful environment.
2. The Applicants are both gainfully employed. VWG is an IT Manager at the [Particulars Withheld] while JM is an Assistant Manager at the [Particulars Withheld]. The Applicants proposed KNM and MNK to be appointed as the legal guardians of the child. The proposed legal guardians filed a consent dated 12<sup>th</sup> July, 2021 accepting to be appointed as the legal guardians of the minor should need arise.
3. The child in this matter was an abandoned child who was found within Kahawa Sukari area in Nairobi by a good Samaritan on the 19<sup>th</sup> June, 2019. He was taken to the Kahawa Sukari Police Post. The event was recorded as OB No. xx/xx/xx/xxxx. The child was taken to Ruiru Level IV Sub-District hospital for a review on the 19<sup>th</sup> June, 2019. He was later admitted on the same date at the New Life Home Trust and this was recorded in the admission book as No. 19/1383. He was later committed to the New Life



Home Trust through the protection and care file no. 1450/2019. He remained at the institution until a Foster Care Agreement was entered into between the home and the Applicants which was followed by placement of the minor with the Applicants on the 7<sup>th</sup> April, 2020.

4. The child was declared free for adoption by the Kenya Children’s Home Adoption Society on the 5<sup>th</sup> August, 2020 through the Certificate Serial No. xxxx.
5. The Directorate of Children Services conducted a home visit with the Applicants and filed a report dated 22<sup>nd</sup> February, 2022, recommending the adoption of the child by the Applicants. The report indicates that the Applicants are financially and emotionally capable of meeting the needs of the minor. The Applicants who live in Kasarani in a spacious five-bedroom house were observed to have bonded well with the minor and had retained the services of a nanny to take care of the minor in their absence. The child has his own well illuminated room and various toys which are essential in the overall growth of the child.
6. The court appointed Mercy Chelangat Ngeno as the guardian ad litem who filed a report dated 1<sup>st</sup> December 2021, which states that the child was fully accepted by the Applicants as their child. The child was observed to be in a loving and caring environment. He was jovial and empathetic towards other children and was in a better position to gain from being with the Applicants as opposed to being in an institution. The minor was present in court virtually during the hearing both for appointment of guardian ad litem and for the Originating Summons and appeared to be happy, healthy and well bonded with the Applicants.
7. The consent of the biological parents was dispensed with since the child was abandoned and no claim had been made to the police or to the New Life Home Trust – Kilimani. This is evinced by the police letter dated 14<sup>th</sup> January, 2020 which confirmed that no claim for the child had been made at the station.
8. The Applicants have both attained the age of 25 years and are at least 21 years older than the child, and have both not attained the age of 65 as is provided in section 158(1) of the [Children’s Act](#). The Applicants have never been arrested as is demonstrated by the police clearance certificate issued to the Applicants bearing reference no.xxxxx and xxxxx respectively. This satisfies the requirement under section 158(3)(b) of the [Children’s Act](#)
9. They have undergone the medical evaluation in accordance with regulations 18(2) of the [Children Adoption Regulations](#) 2005 and were found to be fit. They have duly signed the certificate of acknowledgement of the explanatory memorandum for adopters as required by regulation 19 (c) of the [Children Adoption Regulations](#) 2005.
10. They have been married for more than three years as required by regulation 19 (d) of the [Children Adoption Regulations](#) 2005. They are not a homosexual couple and therefore not in contravention of Section 158(3)(C) of the [Children Act](#) 2001.
11. Having perused the affidavit and the various reports on record it is my considered view that the Applicants have met the legal requirements necessary for them to adopt the child as prescribed in the [Children’s Act](#) and subsequent [Adoption Regulations](#) 2005.
12. In a matter concerning a child, the most important issue in an Application of this nature is the best interest of the child. 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”

13. From the foregoing, the court is satisfied that it is in the best interest of the child for him to be adopted by the Applicants. Accordingly, I allow the prayers sought in the Originating Summons dated 12<sup>th</sup> July, 2021 and order as follows:
- i. The Applicants, Victor Wainaina Gituku and Janet Mwendu Mutua be and are hereby allowed to adopt Baby NAM (the minor), who shall be known as AGW after the adoption.
  - ii. The child's date of birth be and is hereby presumed to be 6<sup>th</sup> June, 2019.
  - iii. The child is presumed to have been born in Kenya in accordance with Article 14(4) of the constitution, and his place of birth shall be Kiambu County.
  - iv. KNM and MNK are hereby appointed as the legal guardians in the event that the Applicants die, or are incapacitated by ill health.
  - v. The Registrar General be and is hereby directed to enter this Order in the Adopted Children's Register.
  - vi. The Director of Immigration be and is hereby authorized to issue the child with a Kenyan Passport.
  - vii. The Guardian ad litem be and is hereby discharged.

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

**L.A ACHODE**

**HIGH COURT JUDGE**

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

