



**In re NW a.k.a EMO (Minor) (Adoption Cause E031 of 2021)
[2022] KEHC 10411 (KLR) (28 June 2022) (Judgment)**

Neutral citation: [2022] KEHC 10411 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
ADOPTION CAUSE E031 OF 2021
MW MUIGAI, J
JUNE 28, 2022
IN THE MATTER OF THE CHILDREN ACT, 2001
AND
IN THE MATTER OF BABY NW A.K.A EMO (MINOR)
EOO
SAAAPPLICANTS**

JUDGMENT

1. The Applicants herein, EOO and SAA (“the Applicants”) approached this Court vide their Originating Summons Application dated 24th November, 2021 and sought to be allowed to adopt Baby NW (hereafter “the child”), and that the baby be known as EMO; that CAO be appointed as the child’s Guardian Ad Litem; that VOA & RAO be appointed as the legal guardians of the child; that the Director of Children’s Services to investigate the case and file a Report.
2. On 1st February, 2022 CAO appeared in Court and was appointed by this Court as the Guardian Ad Litem for the purposes of this adoption.
3. The child who is the subject of the present adoption proceedings was presumably born on 2nd December, 2019. She was found abandoned by a Good Samaritan one Peter Kipande in Thika on 4th December, 2019. The matter was reported at Thika Police station vide OB No. xxxx and minor referred to Thika Level 5 Hospital for medical attention. The Sub – County Children’s Officer sought a vacancy at Macheo Childrens Home for Care and Protection and was admitted at the said home on 30th January, 2020 and the minor named NW. The minor was committed to Macheo Children’s Home on 30th January, 2020 vide Care & Protection Case No. xxxx. The Police confirmed that no one went to the station to claim for the abandoned child and their efforts to trace the kindred of the child have been futile. Mr. PK the Good Samaritan who rescued the minor was contacted and reported that he had not seen or heard from anyone claiming for the child to date.



4. The minor was freed for adoption by the Kenya Children's Homes Adoption Society's Case Committee on its sitting of 17th March, 2021 and a Freeing Certificate Serial No. xxxx issued pursuant to Section 156(1) of the Children's Act 2001.
5. Pursuant to Section 156(1) of the *Children Act*, Child Welfare Society of Kenya, the relevant Adoption Society, prepared and filed in Court a favourable report in respect of the proposed adoption of the child by the Applicants. Another report in respect of the proposed adoption of the child by the Applicant was prepared by the Director of Children's Services, and this report was similarly in favor of the proposed adoption. The guardian ad litem, Collins Asala Obisa, also filed the statutory report pursuant to Section 160(2) of the *Children Act* in which she noted that the proposed adoption of the child by the Applicant would be in the best interests of the child.
6. The Child Welfare Society of Kenya filed their Report dated 29th September, 2021 in Court on 24th November, 2021. On 12/05/2021 Mr. Peter Ndotono – Adoption Program Officer from the Agency appeared in Court and stated that the child subject of these proceedings was declared Free for Adoption on 17/03/2021 vide Freeing Certificate Serial No. xxxx; that the Applicants had approached the Agency on 29/01/2021 with an intention of being ratified for placement with a female child with a view to eventually adopt; an interview session was conducted and home visit conducted at their Katani residence on 4th March, 2021; it was found that the Applicants are a married couple and do not have any child/ren of their own; that the minor was placed with the Applicants on 16/04/2021; that follow up visits were conducted on 21st May, 2021 and on 23rd July, 2021 and a declaration interview conducted at the Adoption office during their third visit on 23rd July, 2021. On the background information of the Applicants it was found that EOO and SAA got married on 6th December, 2015; that they have not been blessed with any child hence the idea of adoption.
7. The Applicants EOO and SAA are employed earning kshs.14,000/- and 29,166/- respectively and they also own a business which earns them a profit of Kshs.20,000/- per month. They own a car and also a parcel of land in Suna West. The Applicant extended family members are in support of this adoption. They had proposed the second Applicant's brother VOA and his wife RAO to be the child's legal guardians. The Kenya Children's Home Adoption Society's recommends the adoption.
8. The Director of Children Services through a Report dated 24th April, 2022 filed in court on 28th April, 2022 in respect of the proposed adoption of the child by the Applicant was prepared by Ms Mercy Muli the Sub-County Children's Officer Athi River in relation to the background information of the Applicants. On 12th May 2022, Ms Mercy Muli appeared in Court and stated that she visited the Applicants residence in Katani Athi river and observed the following; that the Applicants are legally married and and they do not have any children, that both the Applicants are socially and financially stable; that the environment is suitable and conducive for the child; that the child is well taken care of. During the home visit it was observed that the minor is well taken care of; that the Applicants understand that the child has inheritance rights to their property and have no objection. The Director of Children Service recommended the adoption as the Applicants have fulfilled all the legal requirements for local adoption, they have also proved to be capable of taking on parental responsibilities over the child in this matter, they have been found fit, the child in this matter has been declared free for adoption by a registered Adoption Agency.
9. The Guardian ad Litem, CAO though his report dated 10th May, 2022 filed in Court on 11th May, 2022 stated that he resides at Katani area within the neighbourhood of the Applicants. He has known both EOO and SAA for more than ten years. He has visited the Applicants home for almost 4 times and during the said visits he has discovered that they have bonded well with the minor. They also have the support from their extended family. The Guardian ad Litem fully recommended the Adoption.



10. The Legal Guardians VOA (brother to the 2nd Applicant) and his wife RAO filed their Affidavit of Fitness/Consent dated 23rd November, consenting that they would take care of the child in case of any eventuality.
11. All the statutory Reports that have been filed in respect of the proposed adoption of the child by the Applicant have recommended that this Court allows the adoption of the child. This Court has evaluated the facts of this adoption. This is a local adoption. It is evident that the Applicant has fulfilled all the legal requirements relative to the adoption of the child.
12. Considering the Reports filed, this Court has satisfied itself that the Applicants are qualified and able to take care of the child. The Applicants extended family members support this adoption and they have embraced the child into their family.
13. The home visits by the Guardian Ad Litem, the Adoption Society and the Director of the Children's Services established that the Applicants are financially and socially stable and has the emotional capability to provide for the upkeep of the child and give parental care. 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 the Applicants. The child considers the Applicants to be her parents.

Disposition

1. On the basis of 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 Applicant's application.
2. The Applicants, EOO and SAA are hereby allowed to adopt BABY NW Henceforth, the child shall be known as EMO.
3. The child's date of birth is 2nd December, 2019 and the place of birth shall be Kiambu County. The child is a Kenya Citizen by birth and entitled to all rights of a Kenyan citizen.
4. That VOA and RAO shall be the Legal Guardians of the child should such eventuality arise.
5. This Court directs the Registrar General to duly enter this order in the Adoption Register.
6. The Guardian Ad Litem is hereby discharged.

DELIVERED DATED & SIGNED AT MACHAKOS THIS 28th DAY OF JUNE OF 2022 (VIRTUAL CONFERENCE)

M.W. MUIGAI

JUDGE

