



**In re Baby E (Adoption Cause E012 of 2022)
[2022] KEHC 12325 (KLR) (29 July 2022) (Judgment)**

Neutral citation: [2022] KEHC 12325 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
ADOPTION CAUSE E012 OF 2022
RB NGETICH, J
JULY 29, 2022
IN THE MATTER OF THE CHILDREN ACT
AND
IN THE MATTER OF BABY E
AND
IN THE MATTER OF AN APPLICATION FOR ADOPTION BY
MWM AND WNG (APPLICANTS)**

IN THE MATTER OF

**MWM 1ST APPLICANT
WNG 2ND APPLICANT**

JUDGMENT

1. The joint applicants filed the originating summons on 17th May 2022, filed under a certificate of urgency, seeking the following orders:
 - (i) The applicants be allowed to adopt Baby E.
 - (ii) Henceforth the child be named MW.
 - (iii) The date of birth for the child be 21st May 2021 and her place of birth be deemed to be Nairobi County.
 - (iv) The child be presumed to be a Kenyan Citizen by birth and as consequence be entitled to the rights and benefits of a Kenya Citizen, including being issued with a Kenyan passport.
 - (v) That the guardian ad litem be discharged and WMM and LNW be appointed as Legal guardians of the child



- (vi) The Registrar General be directed to make an appropriate entry in the adopted Childrens' Register.
- (vii) That this court does issue such further orders as are in the interest of justice.
2. The application is premised on the grounds that the adoption is in the best interest of the child as she will benefit from the love and affection within a family unit. The child was offered for adoption by the biological mother upon birth on 21st May 2021 at the St. Catherine Health Centre and Maternity Hospital in Nairobi. The reason for the adoption is the biological mother, had some financial difficulties and had 4 other children.
 3. The application is supported by the annexed affidavit sworn jointly by the applicants in which they averred that they are aged 40 years and 39 years respectively and their union was solemnized on 17th December 2011 as per the marriage certificate.
 4. The union is blessed with two (2) sons who were formally adopted in the years 2016 and 2021. That 1st applicant M works as a Senior Audit Manager at [particulars withheld] whereas W works as an Assistant Professor in [particulars withheld] Texas in the United States of America. They depend they have the financial capability to raise the child.
 5. Upon birth, the child was admitted at the Nest Children's Home. Later the child was committed to the Home for Care and Protection for a period of 3 years. The biological mother Ms. SNN gave a final consent on 30th September 2021. The child was declared free for adoption by the Case Committee of the Society as evidenced by cert no. XXXX issued on 6th October 2021. They have no interests adverse to those of the child.
 6. The urgency of the matter is that the wife WN got a job in the United States of America and re-located. She visited Kenya on 15th June 2022 and is scheduled to travel back to the USA on 9th August 2022. She wishes to travel with the minor to the USA and she prays to have the adoption of baby E be expedited to enable the processing of the travel documents.
 7. The Children officer's report was filed on 15th June 2022. From the report, the applicants have been married for 11 years but have no biological children and have previously adopted two (2) boys since their desire to have a large family they wish to adopt the twin girls.
 8. The minor is aged 1 year 7 months, she was given up for adoption by her mother SNN in a letter dated 21st May 2021 through the Adoption Agency of Little Angels Network. The child was declared free for adoption on 6th October 2021, by certificate no. XXXX by Little Angels Network.
 9. The report further indicates the applicants are financially stable and comfortable in providing for the children. The applicants are both employed and earning a decent salary of Kshs 400,000/= and USD 8,000/= respectively. The applicants are aware of the rights of the minor to inherit their property.
 10. The report indicates the child has bonded well with the applicants' family and the child is readily accepted. The child has been declared free for adoption. According to the report it is in the best interest of the child that she is adopted by the applicants.
 11. During the hearing, the 1st applicant confirmed the 2nd applicant is his wife and that they are blessed with two (2) adopted children aged 6 years and 3 ½ years and have have a desire to adopt the child who is about 14 months. He confirmed the child has been under his care since 3rd November 2021. His relatives have accepted the child and she has been fully embraced in the family.



12. The 2nd applicant WN said she currently works as a Professor at [particulars withheld] the USA has taken leave to attend to the matter. She stated that during the period she has been in the USA, the child has been in the care and custody of the 1st applicant and the paternal grandmother. She urged the court to expedite the matter to enable the applicants process the travel documents for the minor as she desires to travel with the minor to the USA.
13. The legal guardian WM, a brother to the 1st applicant stated that the family approved the application for adoption of the child and have accepted the child in the family. He stated that he is aware of his responsibility as a legal guardian and he is aware he is required to take care of the minor in the event the parents are not able.

Analysis and Determination

14. From the record, the biological mother of the child has given her consent to adopt the children.
15. The child was placed under the care and custody of the applicants on 3rd November 2021, a period which is three (3) months preceding the filing of the current application.
16. From record, the 2nd applicant relocated to the USA after filing the current application. She travelled with the other children and she now wishes to return to the USA on 9th August 2022. She prayed that the adoption process is expedited to allow her to relocate with the child and have her reunited with her other siblings.
17. The child having been born in Nairobi by a Kenya mother will be presumed to be Kenyan by birth.
18. Section 186 of the *children Act* 2022 provided as follows:
 - (1) The Court may make an adoption order on application by—
 - (a) a sole applicant, or (b) two spouses jointly.
 - (2) The Court shall not make an adoption order in any case unless—
 - (a) the applicant has attained the age of twenty-five years, but is not above the age of sixty- five years; and
 - (b) the applicant, or both of the applicants in a joint application, is more than twenty-one years older than the child.
19. I have perused and considered documents filed and the applicants' evidence in court and I am satisfied they have met requirements to adopt the child herein and it is in the best interest of the child to be adopted by the applicants.
20. For the foregoing reasons, the applicants originating summons dated 17th May 2022 is hereby allowed.
21. Final orders:
 - (1) The applicants are hereby allowed to adopt Baby E.
 - (2) The name of the child to be changed to MW.
 - (3) That the guardian *ad litem* be discharged.
 - (4) That WMM and LNW are appointed as Legal Guardians of the child.



- (5) The Registrar General is hereby directed to make appropriate entry in the Adopted Children's Register.

JUDGMENT DELIVERED, DATED AND SIGNED VIRTUALLY AT KIAMBU THIS 29TH DAY OF JULY, 2022

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RACHEL NGETICH

JUDGE

In the Presence of:

Kinyua – Court Clerk

Ms. Mbuvi for the Applicant

1st Applicant – Present

