



REPUBLIC OF KENYA



**In re BG aka B (Baby) (Adoption Cause E010 of 2022)
[2022] KEHC 13377 (KLR) (Family) (30 September 2022) (Judgment)**

Neutral citation: [2022] KEHC 13377 (KLR)

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

ADOPTION CAUSE E010 OF 2022

MA ODERO, J

SEPTEMBER 30, 2022

IN THE MATTER OF

JWK 1ST APPLICANT

BMW 2ND APPLICANT

JUDGMENT

1. Before the court is the originating summons dated February 15, 2022 in which the applicants JWK and BMW seek the following orders:-

“ 1. That the applicants be authorized to adopt baby BG aka baby B aka Baby G aka Baby BG, a minor who is to be known as BWW and the Registrar General be directed to enter this adoption into the Register of Adoptions.

2. That LKN and EWK be appointed as the legal guardians of the minor presumed to be have been born in Kenya.”

2. The summons was supported by the statement of even date sworn by the applicants. The summons was canvassed by way of ‘viva voce’ evidence on the virtual platform.

3. The applicants are a couple who got married to each other eighteen (18) years ago in the year 2004. Their union has not to date been blessed with any child. They now wish to adopt the subject child in order to fulfil their wish to have a child of their own and out of their desire to provide a needy child with a home.

4. The applicants confirm that they do understand the legal implications of an adoption order. They undertake to accord to the subject child all the rights due to a biological child including the right of inheritance.



Analysis and Determination

5. The prerequisites for adoption are set in section 156(1) of the *Children Act 2001*, which provides as follow: -

“ 156(1) No arrangement shall be commenced for the adoption of a child unless the child is at least (6) weeks old and has been declared free for adoption by a Registered Adoption Society in accordance with the Rules prescribed in that behalf.”
6. The subject child was born on June 29, 2019. She is now aged two (2) years old and is above the six (6) week age limit provided for in the law.
7. Buckner Kenya Adoption Services a registered adoption agency have annexed to their report a certificate serial number XXX dated February 5, 2021 declaring the child free for adoption. I therefore find that the legal prerequisites for adoption have been met.
8. The duty of this court is to analyze the evidence on record in order to determine whether the applicants are suitable adoptive parents. The applicants are both citizens of Kenya as evidenced by copies of their National identity cards, appearing at pages 1 and 2 of the summons.
10. As stated earlier the applicants are a married couple. They solemnized their union on August 4, 2022 at the PCEA [particulars withheld] Church in Nyeri County. A copy of their marriage certificate serial number XXXX appears at page 3 of the summons. The couple have no biological children together. They now wish to adopt a child in order to complete their family.
11. The applicants are both engaged in income earning activities. The 1st applicant runs a hardware business whilst the 2nd applicant runs a tailoring business. The 1st applicant has annexed to the summons copies of his bank statement issued by Equity Bank (pages 30-32 of the summons). I am satisfied that the applicants are financially stable and are capable of providing for the needs of a growing child.
12. The applicants are both committed Christians and intend to raise the child in the Christian faith. The 2nd applicant is a church elder at the PCEA Church where the couple worship. They have annexed at page 29 of the summons a copy of a recommendation letter dated August 12, 2018 written by Rev George Mwaura of the PCEA Church – [particulars withheld].
13. The applicants were both examined by a doctor and found to be physically and mentally fit. They have annexed at page 35 and 36 of the police clearance certificate issued to each of them by the Directorate of Criminal Investigation as proof that neither has a criminal record.
14. The applicants told the court that their respective families are aware of and support their intention to adopt the subject child. They have appointed LKN and EWK, the brother-in-law and sister of the 2nd applicant as the legal guardians for the child. The proposed legal guardians have both signed a consent dated February 15, 2022 indicating their willingness to act as legal guardians for the child.
15. All in all this court is satisfied that Applicants are suitable adoptive parents for the child.
16. The subject child was born on June 29, 2019 at [particulars withheld]. The child had a medical problem at birth, which necessitated that the baby be admitted in the hospital. The child's biological mother whose name was given as ACK absconded from the hospital on July 2, 2019 leaving her baby behind. The mother never returned to reclaim her child.



17. On July 5, 2019 the abandonment was reported at Kabete Police Station *vide* OB number X of July 5, 2019. Thereafter on November 13, 2019 the child was committed to Charity Childrens Home for care and protection. On March 27, 2021 the child was released into the custody of the applicants under a foster care agreement.
18. Article 14 of the [Constitution of Kenya 2010](#) deals with issue of citizenship. Article 14(4) provides as follows:
 - “(4) A child found in Kenya who is, or appears to be less than eight years of age and whose nationality and parents are not known, is presumed to be a citizen by birth.”
19. The child herein was abandoned in the Kangemi area of Nairobi County within the Republic of Kenya. Indeed the child was born in a Kenyan hospital. Accordingly, I find that the child is a citizen of Kenya by birth and I so do declare.
20. The mother of the subject child absconded from the hospital abandoning the baby who was by then only two (2) weeks old. To date the mother has never been traced. She did not return to claim her baby. A final police letter dated June 14, 2020 (pages 43-44) confirms that all efforts by police to trace the child's biological mother/relatives have been unsuccessful.
21. Given the fact of her abandonment there exists no known person from whom consent for this adoption can be sought and/or obtained. I therefore waive the requirement for consent in line with section 159(1)(a) of the [Children Act](#).
22. In deciding upon any matter involving a child Courts are obliged to give priority to the best interests of the said child. Section 4(2) of the [Children Act 2001](#) provides:-
 - “(2) In all actions concerning children, whether undertaken by public or private social welfare institutions, court of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” (own emphasis)
23. This is a child who was abandoned shortly after her birth. She faced an uncertain future living in children's homes and other similar institutions. This adoption allows the child the opportunity to be raised in a stable and loving home environment.
24. The child has lived with the Applicants for about one (1) year. I have no doubt the child has bonded with the applicants. This is the only family the child knows. I was able to see the child online. She was comfortable sleeping in the arms of the 2nd applicant.
25. I have perused the reports prepared by the adoption agency, the guardian *ad litem* and the Director Children's Services. All three reports were positive and all recommended the Adoption.
26. A home visit was conducted by the children's officer. The applicants reside in a one bedroomed house in [particulars withheld] – Kiambu County. The house is secure within a gated community. There were adequate facilities and space for the child. The home was found to be a conducive environment to raise the child.
27. In conclusion I find that this adoption does serve the best interests of the child. Accordingly, I do allow this application and make the following orders:-



1. The applicants JWK and BMW are authorized to adopt the child known as Baby BG aka Baby B aka Baby G aka Baby BG aka Baby BG .
2. Upon adoption the child will be known as BWW.
3. The child is declared to be a Kenyan citizen by birth and is entitled to all the rights and benefits in respect thereto.
4. The Registrar General is directed to make the relevant entry in the Adopted Childrens Registry.
4. LKN and EWK are appointed as the legal guardians for the child.

DATED IN NAIROBI THIS 30TH DAY OF SEPTEMBER 2022

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MAUREEN A ODERO

JUDGE

