



REPUBLIC OF KENYA



**In re JZ aka J (Child) (Adoption Cause E122 of 2022)
[2022] KEHC 13322 (KLR) (Family) (30 September 2022) (Judgment)**

Neutral citation: [2022] KEHC 13322 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E122 OF 2022
MA ODERO, J
SEPTEMBER 30, 2022
IN THE MATTER OF BABY GIRL AKA BABY JZ AKA BABY J (THE CHILD)**

**IN THE MATTER OF
SMM APPLICANT**

JUDGMENT

1. Before the court is the originating summons dated July 2, 2022 in which the applicant seeks the following orders:-
 - “ 1. That the applicant be authorized to adopt the child abandoned baby girl aka baby jz aka baby j who is presumed to be a kenyan citizen, born on the 29th of July 2011.
 2. That upon adoption the child be known as MWM.
 3. That JNW of kenyan national identify card number xxxxxxxx be appointed as legal guardian of the child abandoned baby girl aka baby jz aka baby j.
 4. That the registrar general be directed to enter this adoption into the registered of adoptions and a subsequent birth certificate do issued by the registrar of births and deaths.”
2. The application is supported by the statement of even date sworn by the applicants. The matter was canvassed by way of oral evidence on the virtual platform.
3. The applicant is a single woman who has never been married and has no biological children of her own. She now seeks to adopt an eleven (11) year old girl in order to complete her family and to provide a needy child with a home.



4. The applicant confirmed that she fully understands the legal implications of an adoption order. She undertakes to accord to the subject child all the rights due to a biological child including the right to inherit.

Analysis and Determination

5. The prerequisites for adoption are set in section 156(1) of the *Children's 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 is believed to have been born on July 29, 2011. She is now aged eleven (11) years old and is well above the six (6) week age limit provided for in the law.
7. Child welfare society of kenya which is a registered adoption agency have annexed to their report an original copy of their certificate serial number 101 dated September 14, 2021 declaring the child free for adoption. As such, I find that all 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 applicant is a suitable adoptive parent. The applicant is a kenyan citizen. she has annexed to the summons a copy of her national identity card (Annexure 'SMM'-1).
10. The applicant is a single woman who has never been married. She has no biological child of her own. The applicant is now retired and earns a monthly pension. She also runs a second hand (Mitumba) clothes business. The applicant realizes a monthly income of approximately Kshs 16,000 which is sufficient to enable her cater for the needs of the child.
11. Aside from this monthly income the applicant owns land in sosian as well as a plot in ruai. She has also invested money in a fixed deposit. I find that the applicant is financially stable.
12. The applicant is a christian and intends to raise the child in the christian faith. She is physically and mentally fit. The applicant has annexed a copy of a clearance certificate issued by the directorate of criminal investigation (Annexure 'SMM-3' to the Further statement dated August 19, 2022) proving that she has no criminal record.
13. The applicant told the court that her extended family are aware of and support her intention to adopt the child. She has appointed her brother JNW as the legal guardian for the child. The said legal guardian has signed an affidavit of consent dated July 22, 2022 confirming his willingness to act as legal guardian for the child.
14. All in all this court is satisfied that applicant is a suitable adoptive parent for this child.
15. The subject child is a girl child who is believed to have been born on July 29, 2011. The child was abandoned on January 29, 2015 along Ngara Fig Tree Road in Nairobi. A yellow paper bag containing the child's clothes was found next to her. A good samaritan rescued the child and reported the abandonment at kamukunji police station vide OB Number 6 of the January 29, 2013. The police then referred the matter to CWSK.
16. Thereafter on November 22, 2015 the Nairobi children court committed the child to Mama Ngina children's home for care and protection. The child was transferred to Bungoma children's home where



she remained until the year 2021. On October 7, 2021 the child was placed in the custody of the applicant under a foster care agreement.

17. 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.”

18. The subject child was found abandoned at age of three (3) years in the Ngara area of Nairobi county in the Republic of Kenya. I declare that the child is a citizen of Kenya by birth.

19. The subject child was abandoned at the age of three (3) years. Efforts made by police to trace the child's biological mother/relatives have proved futile. From the year 2015 to date no person has come forward to claim the child. A final police letter dated July 22, 2019 is proof of this fact.

20. The adoption agency also made efforts to reunite the child with her biological mother/relatives by placing the child's photograph in an advert seeking the parents of lost children. This advert was published twice on May 10, 2015 and on June 28, 2015. No person came forward to claim the child.

21. Given the fact of her abandonment, I find that there exists no known person from whom consent for this adoption can be sought and/or obtained. In the circumstances, I waive the requirement for consent in line with section 159(1)(a) of the *Children's 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. The child herein was abandoned as a toddler in the year 2011. She has spent the past ten (10) years residing in various children's home. Given the age of the child, it is unlikely that any other person would have come forward to adopt the child. This adoption proves the child with the best chance to live in a stable home environment.

24. I was able to see and speak to the child online. She was a healthy happy girl who was able to answer questions about herself. Although the child did not understand, what 'adoption' is, she told the court that she was very happy living with the applicant whom she referred to as her 'mother'. The child has undoubtedly bonded with the applicant. This is the only home she knows.

25. A home visit was conducted by the children's officer. The applicant resides in her own home in Kamulu, Ruai. The house is a two bed-roomed house in its own compound – it is connected to both power and water and is surrounded by a perimeter wall. The home was found to provide a secure environment for the child. The applicant has enrolled the child in school.

26. 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.

27. Finally, I am satisfied that this adoption serves the best interests of this child. Accordingly, I do allow this application and make the following orders:-



1. The applicant SMM is authorized to adopt the child known as abandoned baby girl aka Baby JZ aka Baby J.
2. Upon adoption the child will be known as MWM.
3. The child is declared to be a Kenyan Citizen by birth and is entitled to all the rights and privileges in this respect.
4. JNW is appointed as the legal guardian for the child.
5. The registrar general is directed to make the relevant entry in the adopted children's registry

DATED IN NAIROBI THIS 30TH DAY OF SEPTEMBER 2022

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MAUREEN A. ODERO

JUDGE

