



REPUBLIC OF KENYA



KENYA LAW
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**In re Baby VJK (Adoption Cause E009 of 2022)
[2022] KEHC 13319 (KLR) (Family) (23 September 2022) (Judgment)**

Neutral citation: [2022] KEHC 13319 (KLR)

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

FAMILY

ADOPTION CAUSE E009 OF 2022

MA ODERO, J

SEPTEMBER 23, 2022

IN THE MATTER OF CHILDREN ACT, 2001

AND

IN THE MATTER OF ADOPTION OF BABY VJK AKA JVK AKA AM

IN THE MATTER OF

MWR APPLICANT

JUDGMENT

1. Before this court is the originating summons dated February 14, 2022 by which the applicant MWR seeks the following orders:-
 1. That the applicant be authorized to adopt Baby J a minor who is to be known as NCM and the Registrar General be directed to enter this adoption into the Register of Adoption.
 2. That MWR be appointed as the legal guardian of the minor presumed to have been born in Kenya.”
2. The application was 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 child of her own. The applicant now seeks to adopt the subject as she desires to have a child to call her own and to provide a needy child with a home.
4. The applicant confirms to the court that she understands the legal implications of an adoption order. She undertakes to accord to the subject child all rights due to the biological child including the right to inherit.



Analysis and Determination

5. The legal 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 was born on February 15, 2020 at the Ruiru Sub-District Hospital. A copy of the child's birth certificate serial number xxxx is annexed to the summons. Accordingly, the child is now aged about two (2) years old and is above the six (6) week age limit proved for in law.
7. Buckner Kenya Adoption Services, a registered adoption Agency have annexed to their report a certificate serial number xxx dated April 30, 2021 declaring the child free For adoption. I therefore find that all the legal prerequisites for an adoption order have been met.
8. The duty of this court is to analyze the evidence on record to determine whether the applicants are suitable adoptive parent. The applicant is a Kenyan citizen as evidenced by the annexed copy of her national identity card (page 1) of the summons. The applicant has also annexed at Page 2 a copy of her Birth Certificate serial number xxxx
9. The applicant told the court that she is a single lady and has never been married. She has no biological children of her own. The applicant wishes to adopt in order to fulfil her desire to have a child to call her own.
10. The applicant is a committed Christian and intends to raise the child in the Christian faith. She have annexed a recommendation letter dated February 21, 2019 written by MK the Lead Pastor at [particulars withheld] Church where the applicants worships. (Page 19 of the summons).
11. The Applicant is employed by the [particulars withheld] (xxxx) where she earns a net salary of approximately Kshs 245,000. She has annexed to the summons copies of her payslips and of her Bank Statements issued by Standard Chartered Bank (pages 20-27) The applicant also owns parcels of land in Kajiado for which she has annexed Title Deeds (pages 28-33). I am satisfied that the applicant is financially stable and has sufficient resources to enable her provide to the child.
12. The applicant was examined by a doctor and was found to be physically and mentally fit. She has annexed at page 34 of the summons a Police Clearance Certificate issued to her by the Directorate of Criminal Investigations as proof that she has no criminal record.
13. The applicant informed the court that her family support her intention to adopt a child. She has appointed her sister MGWR as the legal guardian for the child. The nominated legal guardian has signed a consent dated February 17, 2019 confirming her willingness to be the child's legal guardian.
14. The subject child was born on February 15, 2020 at Ruiru Sub District Hospital to a lady who gave her name as AW. Following the birth of the child, the biological mother absconded from the hospital leaving her baby behind. The mother did not leave valid contacts with the hospital and could to be traced. The abandonment was reported at Ruiru Police station vide OB number 65 of February 17, 2020. On March 24, 2021 the Nairobi Childrens Court committed the child to New Life Home Trust for care and Protection. Thereafter on April 30, 2021 the child was released into the custody of the plicant under a Foster Care Agreement.



15. Article 14 of the Constitutions of Kenya, 2010 deals with the question 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.

16. The subject child was abandoned immediately after birth at Ruiru Hospital within Kiambu County in the Republic of Kenya. I therefore declare that the child to be a citizen of Kenya by birth.

17. Efforts by police to trace the biological mother of the child have borne no fruit. No person went to the hospital seeking for the child. The final police letter dated October 9, 2020 confirms the fact that all efforts to trace the baby’s biological mother had failed. In the circumstances, there exists no known person from whom consent for this adoption can be sought and/or obtained.

Accordingly, I waive the requirement for consent in line with section 159(1) (a) of the Children Act 2001.

18. 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, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration”. (Own emphasis)

19. The subject child was abandoned by her biological mother immediately after her birth. The child faced an uncertain future living in childrens homes and other similar institutions. This adoption allows the child the opportunity to be raised in a living and stable home environment.

20. I was able to see the child online. She was a health happy toddler who smiled widely and was comfortable in the arms of the applicant. The child has lived with the applicant in her home for a period of over one (1) year. I have no doubt that they have bonded. This is the only family the child knows.

21. A home visit was conducted on June 10, 2022. The applicant lives in a three-bedroomed house along [particulars withheld] in Nairobi. The home is a four bedroomed house built on a half acre plot. The home is modern and well furnished with adequate facilities for the child. The applicant has employed a nanny to help in caring for the child. The house was secure and found to be a conducive environment for the child. I have perused the reports filed by the *guardian ad litem* the Adoption Agency and the Directorate Childrens Services. All three reports were positive and all recommend the adoption.

22. Finally, I find that the adoption will serve the best interest of the subject child. Accordingly, I do allow the application and make the following orders:-

1. The applicant MWR is authorized to adopt the child known as Baby VJK aka JVK aka AW.
2. Upon adoption the child will be known as NCMR
3. The child is declared to be a Kenyan citizen by birth and entitled to all the rights and privileges and other benefits thereto.
4. The Registrar General is directed to make the relevant entry in the Adopted Children’s Register.



5. MGWR is appointed as the legal guardians of the child.

DATED IN NAIROBI THIS 23RD DAY OF SEPTEMBER 2022.

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MAUREEN A ODERO

JUDGE

