



REPUBLIC OF KENYA



**In re KM (Adoption Cause E018 of 2022) [2022] KEHC 13503 (KLR)  
(Family) (23 September 2022) (Judgment)**

Neutral citation: [2022] KEHC 13503 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
ADOPTION CAUSE E018 OF 2022  
MA ODERO, J  
SEPTEMBER 23, 2022  
IN THE MATTER OF THE CHILDREN'S ACT 2001  
IN THE MATTER OF AN APPLICATION FOR ADOPTION OF BABY A**

**IN THE MATTER OF  
RMM ..... APPLICANT**

**JUDGMENT**

1. Before this court is the originating summons dated March 3, 2022 in which the applicant seeks the following orders:-
  - “ 1. That the applicant be and are hereby authorized to adopt the child currently known as Baby A.
  2. That if the adoption order is granted the said child is thereafter known as NKM.
  3. That the child's date of birth be declared to be January 2, 2021 and his place of birth to be declared to be in Machakos, Kenya.
  4. That the child be considered to be a Kenyan citizen.
  5. That the consent of the biological parents of the child be and is hereby dispensed with since the child was abandoned.
  6. That AMM and PK may be appointed the legal guardian of the child in the event of the death of the applicant or incapacity of the applicants, rendering them un-available or incapable of taking care of the child.”



2. The application was supported by the statement of even date sworn by the applicant. The matter was canvassed by way *viva voce* evidence on the virtual platform.
3. The applicant is a single woman who has never been married. She has no biological child of her own. The applicant now wishes to adopt a girl child aged 1½ years to fulfil her desire to have a family and to provide a needy child with a home.

### **Analysis and Determination**

4. 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.”
5. The subject child was born on January 2, 2021. Annexed to the summons is a copy of her Birth Certificate Serial Number XXXX (annexture RMM ‘4’). Therefore, the child is now aged about 1½ years, which is above the six (6) week age limit provided for in law.
6. Kenya Childrens Home Adoption Society which is a registered Adoption Agency have annexed to their report the original copy of their certificate Serial Number XXX dated September 15, 2021 declaring the child free for adoption. Accordingly, I am satisfied that the legal prerequisites for adoption have been met.
7. The duty of this court is to analyze the evidence availed to determine whether the applicant is a suitable adoptive parent. The applicant is a Kenyan citizen as evidenced by the annexed copy of her National Identity Card (annexture RMM ‘3’).
8. The applicant is a single lady who has never been married. She has no biological children of her own. She now wishes to adopt the Subject child in order to have a family of her own.
9. The applicant is a christian and intends to raise the child in the christian faith. Annexed to the summons is a letter of recommendation dated May 5, 2021 written by Rev FKK of the Catholic Diocese of Malindi. She is physically and mentally fit and is capable of raising a young child.
10. The applicant is in gainful employment. She is currently employed as (Particurlars withheld). She earns a monthly income of approximately Kshs 700,000, which is more than sufficient to provide for the needs of a growing child. The applicant has annexed to the summons a copy of her payslip (annexture RMM ‘7’) as well as copies of her bank statements obtained from Standard Chartered Bank.
11. Aside from her paid employment the applicant also owns a parcel of land in Kajiado. All I all I find that the applicant is financially stable.
12. The applicant has annexed to the summons a copy of a Clearance Certificate issued to her by the Directorate of Criminal Investigations proving that she has no criminal record (annexture RMM ‘5’). She told the court that her extended family support her decision and have welcomed the child with open arms.
13. The applicant has appointed her sister AMM and her brother-in-law PK as the legal guardians for the child. The said legal guardians have signed a consent dated May 6, 2021 confirming their willingness to act as legal guardians. (Page 36 of the summons). All in all I am satisfied that the applicant is a suitable adoptive parent.



14. The subject child was abandoned on January 12, 2021 at the age of ten (10) months at the [particulars withheld] A good Samaritan reported the matter at Machakos Police Station vide OB Number XX of January 12, 2021. The Machakos Children’s Court committed the child to Thomas Barnardo House for care and protection. On November 24, 2021 the child was released to the custody of the applicant under a Foster Care Agreement.
15. Article 14 of the Constitution 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 aged ten (10) months in Machakos County in the Republic of Kenya. I therefore declare the child to be a Kenyan Citizen by birth.
17. Following the abandonment of the child police efforts to trace the biological mother/relatives of the child have borne no fruit. No person came forward to claim the child. A final Police letter dated August 12, 2021 is proof of this fact.
18. Given the facts of her abandonment. I find that 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.
19. 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)
20. This a child who was abandoned shortly after her birth. She faced an uncertain future living in childrens homes and other similar institutions. This adoption allows the child the opportunity to be raised in a stable home environment.
21. I was able to see the child online. She was a healthy toddler who was very comfortable in the arms of the applicant. I have no doubt that the child has bonded with the applicant.
22. A home visit was conducted by the children’s officer on July 1, 2022. The applicant resides in her own three-bedroomed apartment along Riar Road. The house is in a secure environment. The area is close to amenities like schools, hospital, shopping malls etc. The applicant has employed a nanny to help care for the child. The home environment was found to be conducive for the child.
23. I have perused the reports prepared by the Adoption Agency, the *Guardian Ad Litem*, and the Director Childrens Services. All three reports are positive and all recommend the adoption. I am satisfied that this adoption serves the best interests of the child, Accordingly, I do allow this application and make the following orders:-
1. The applicant RMM is authorized to adopt the child known as Baby A.
  2. Upon adoption order the child be known as NKM.
  3. The child is 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 Children's Register.
5. AMM and PK are appointed legal Guardians for the child."

**DATED IN NAIROBI THIS 23RD DAY OF SEPTEMBER 2022.**

.....  
**MAUREEN A. ODERO**  
**JUDGE**

