



**In re TMM (Baby) (Adoption Cause E050 of 2022)
[2022] KEHC 14889 (KLR) (Family) (28 October 2022) (Judgment)**

Neutral citation: [2022] KEHC 14889 (KLR)

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

ADOPTION CAUSE E050 OF 2022

MA ODERO, J

OCTOBER 28, 2022

IN THE MATTER OF

LMG APPLICANT

JUDGMENT

1. Before this court is the originating summons dated April 8, 2022 by which the applicant seeks the following orders: -
 - ' 1. That LMG be authorized to adopt
TMM aka JNM aka JNM aka M aka M aka Baby Girl M (the child), who is presumed to be a Kenyan citizen born on the May 1, 2014.
 2. That upon adoption, the child be known as MRL.
 3. That FNG & JNN of Kenyan national identity card number XXXX & XXXX respectively be appointed as legal guardian of Baby TMM aka JNM aka JNM aka M aka M aka Baby Girl M.
 4. That the registrar general be directed to enter this adoption into the register of adoptions and a subsequent birth certificate do issue by the registrar of births and deaths.'
2. The application was supported by the statement of even date sworn by the applicant. The matter was canvassed by way of oral evidence on the virtual platform.
3. The applicant LMG is a single woman who has no child of her own. She told the court that she wishes to adopt the subject child who is a girl child aged eight (8) years old. The applicant confirmed that she understood and accepted the legal implications of an adoption order. She



undertook to accord to the subject child all rights due to a biological child including the right to inherit.

Analysis and determination

4. I have considered this application, the reports filed in court as well as all the evidence adduced in support thereto. The prerequisites for adoption are set out in section 184 (1) of the [Children Act 2022](#) which provides –
 - ' 184(1) A person shall not commence any arrangements for the adoption of a child unless –
 - (a) the counsel in accordance with the rules has declared the child free for adoption.
 - (b) the child has attained the age of six weeks.'
5. The subject child was born at the [particulars withheld] Hospital on May 1, 2014. She is therefore now aged eight (8) years old and is well above the six (6) week age limit provided for in law.
6. Kenya Children's Homes which is a registered adoption society have annexed to their report dated May 9, 2022 a copy of their certificate serial number XXXX dated November 21, 2018 declaring the child free for adoption. Accordingly, I am satisfied that the legal prerequisites for an adoption order have been met.
7. The duty of this court is to analyze the evidence on record, to determine whether the applicant is a suitable adoptive parent.
8. The applicant is a Kenyan citizen born in the year 1978. She has annexed to the summons a copy of her national identify card (annexture 'LMG-1'). The applicant works as [particulars withheld]. She has annexed to the summons a copy of her payslip (LMG-'2').
9. The applicant has also annexed copies of bank statements in respect of an account which she holds with Equity Bank. It is evident that the applicant is financially secure and is able to provide for the needs of a growing child.
10. The applicant is a born again Christian and intends to raise the child in the Christian faith. She has annexed a copy of a letter of recommendation dated September 28, 2021 written by Rev JK of the [particulars withheld] where the applicant worships. (Annexture LMG-'3').
11. The applicant was examined by a doctor and was found to be in sound physical and mental health. The applicant has annexed a copy of a clearance certificate issued to her by the Directorate of Criminal Investigations confirming that she has no criminal record.
12. The applicant told the court that her elder sister NWG had initially commenced adoption proceedings in respect of the subject child vide Adoption Cause No XX of 2019 filed at the Muranga High Court.
13. Unfortunately the applicants sister died unexpectedly before completing the adoption of the child. The death certificate for the late NWG serial number XXXX is annexed as proof of the demise of the initial intended adoptive parent. A copy of the proceedings from the adoption cause filed by the applicants late sister at the Muranga High Court are also annexed to this summons (annexture LMG '6')



14. The applicant who had been named as the legal guardian then took the child into her home and upon consultation with the family decided to adopt the child herself. She confirms that the entire family have welcomed the child as one of her own.
15. From the above history it is clear that the applicant is a suitable adoptive parent for this child.
17. The subject child was born in Athi River on May 1, 2014. The biological mother of the child named TMM offered up the child for adoption stating that she did not have sufficient resources to provide for the child. the father had abandoned her. The child was then admitted at XXXX House on May 16, 2014 barely two (2) weeks after her birth.
16. Annexed to the summons is a handwritten letter dated May 16, 2014 from the biological mother indicating her intention and desire to give up her child for adoption. (Annexure LMG – ‘4’). The mother did also complete and sign the initial consent on May 1, 2014 prior to the birth of the baby. Thus there were clear indications that the mother voluntarily approached the adoption agency and indicated her willingness to officer up her child for adoption.
17. Following the admission of the child to XXXX House, the biological mother was advised to return in six (6) weeks to complete the adoption process. However, she failed to return. Efforts to trace the mother through the telephone contact she had given were futile. The matter was then reported to Langata Police Station as an abandonment vide OB Number XX of June 29, 2015.
18. Thereafter on August 8, 2018 the Nairobi childrens court committed the child to XXXX House for care and protection. On September 21, 2021 the child was released into the custody of the applicant under a foster care agreement.
19. The adoption agency continued in its efforts to trace the mother. In a letter dated November 16, 2018 one DK an adoption programmed officer told the court that she managed to trace the mother on phone in September 2018 and requested her to return to complete the adoption process. (See letter dated November 16, 2018 at page 50 of the summons).
20. The mother was hostile and stated that she did not want to be bothered as she had already given up the child for adoption. She later stopped picking her calls and switched off her phone.
21. Similarly police efforts to trace the biological mother bore no fruit. On February 23, 2016 the OCS Langata Police Station wrote the final letter (annexure LMG ‘5’) confirming that the mother could not be traced.
22. Based on the above narration I find that the subject child was effectively abandoned by her mother. Therefore there exists no person from whom consent for this adoption can be sought and/or obtained. The mother clearly did not want this child. Accordingly, I do waive the requirement for consent in line with section 187(1) of the Act.
23. Section 8(1) Children’s Act, 2022 provides as follows:-
 - ’ 8(1)In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies—
 - (a) the best interests of the child shall be the primary consideration;



(b) the best interests of the child shall include, but shall not be limited to the considerations set out in the first schedule.'(own emphasis)

24. This is a child who was abandoned by her biological mother a few weeks after her birth. The identity and whereabouts of the child's father are not known. The child faced an uncertain future living in children's homes.
25. The first person who came forward and commenced adoption proceedings in respect of the child unfortunately died before the adoption was completed.
26. The applicant herein who was the legal guardian kindly and generously decided to step up and fulfil the desire of her late sister to have the child become a member of their family.
27. This adoption allows the child the opportunity to be raised in a stable and loving home environment. Indeed this is more or less a kinship adoption. The child will remain in the same family environment now living with the sister to the woman who initially wanted to adopt her.
28. The applicant has appointed her sister FNG and her husband JNN as the legal guardians for the child. The two have each signed consents dated April 8, 2022 indicating their willingness to act as legal guardians.
29. I have perused the reports filed by the guardian ad litem, the adoption agency, and the director children's services. All three reports are positive and all recommend the adoption.
30. A home visit was conducted by the children's officer. The applicant lives in a comfortable two bedroomed home in Kinoo. The house is well furnished with ample room for the child. The applicant has employed a nanny to assist in caring for the child.
31. The child has been living with the applicant since August 2021. I have no doubt that the two have bonded. I was able to see the child online. She was a healthy articulate young girl. The child was very comfortable in the company of the applicant whom she referred to as 'mum'. I have no doubt that this adoption does serve the best interest of the child.
32. Finally I do allow this adoption and make the following orders:-
 - (1) The applicant LMG is authorized to adopt the child known as Baby TMM aka JNM aka JNM aka M aka M aka Baby Girl M.
 - (2) Upon adoption the child will be known as MRL.
 - (3) The child is a citizen of Kenya by birth and is entitled to all the rights and privileges thereto.
 - (4) The registrar-general is directed to make the relevant entry in the adopted children's register.
 - (5) FNG and JNN are appointed as the legal guardians of the child.

DATED IN NAIROBI THIS 28TH DAY OF OCTOBER, 2022.

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MAUREEN A ODERO
JUDGE

