



**In re Baby MW (Minor) (Adoption Cause E062 of 2022)  
[2022] KEHC 16394 (KLR) (Family) (16 December 2022) (Judgment)**

Neutral citation: [2022] KEHC 16394 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
ADOPTION CAUSE E062 OF 2022  
MA ODERO, J  
DECEMBER 16, 2022  
IN THE MATTER OF AN APPLICATION FOR AN  
ADOPTION OF BABY MW AKA ZNG (MINOR)**

**IN THE MATTER OF**

**AGH ..... APPLICANT**

**JUDGMENT**

1. Before this court is the originating summons dated March 3, 2022 by which the applicant seeks the following orders:-
  - “1. That the consent of the biological parents of baby MW be and is hereby dispensed with since the infant was abandoned by her biological mother.
  2. That the applicant be and is hereby authorized to adopt Baby MW and the child be called ZNG henceforth.
  3. That the Registrar-General do make the appropriate entries in the Adopted Children’s Register in respect of Baby MW.
  4. That the court do issue such orders as may be necessary in the best interest of the child.”
2. The application was supported by the Statement of even date sworn by the applicant. The matter was canvassed by way of viva voce evidence on the virtual platform.
3. The applicant told the court that she is a single woman who has no biological child of her own. She seeks to adopt the Subject child who is a girl child aged eight (8) years old. The Applicant stated that she fully understood the legal implications of an adoption order. She undertook to accord the Subject child all rights due to a biological child.



## Analysis and Determination

4. I have considered this application, thereports 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 –
  - a. “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 on November 30, 2014at the Kiambu District Hospital. She is now aged eight (8) years old which is well above the six (6) week age limit provided for in law.
6. KKPI Adoption Society which a registered adoption agency have annexed to their report a copy of their Certificate Serial Number 775 dated October 6, 2017declaring the child Free For Adoption. In the circumstances, I am satisfied that all the legal prerequisites for adoption have been met.
7. The duty of this court is to analyze the evidence in order 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 (Exhibit ‘P’). The applicant has never been married and has no biological child of her own. She desires to adopt in order to complete her family.
8. The Applicant is in gainful employment and is employed as an Accountant by the Judiciary. She has annexed copies of her payslips (Exhibit 10 ‘b’) to the summons. The Applicant has also annexed copies of her bank statements for an account held with the Kenya Commercial Bank (Exhibit 10 ‘a’). All in all I find that the Applicant is financially secure and has sufficient means to provide for the child.
9. The applicant is a Christian and intends to raise the child in the Christian faith. She was examined by a doctor and was found to be mentally and physically fit. The applicant has also annexed a copy of a clearance certificate issued to her by the Directorate of Criminal Investigations (Exhibit ‘10 ‘c’) proving that she does not have a criminal record
10. The applicant told the court that her family are aware of and support her intention to adopt a child. She has appointed her sister AWH as the Legal Guardian for the child. The said legal Guardian has signed a consent dated November 22, 2022indicating her willingness to act as legal guardian.
11. Based on the foregoing I am satisfied that the applicant is a suitable adoptive parent.
12. The subject child was born on November 30, 2014at the Kiambu District Hospital. The child’s biological mother who gave her name as MW a resident of Githurai abandoned the child in the hospital a day after delivering the child. Efforts to trace the mother through the contact number provided to the hospital were unsuccessful as the number was not reachable.
13. The abandonment was then reported to the Kiambu Police Station vide OB Number 47 of December 3, 2014. Meanwhile the baby had been placed in a children’s Home. On 26<sup>th</sup> September 2017 the child was committed to Mogra Rescue Centre for care and Protection. On December 22, 2017 the child was placed into the custody of the applicant under a Foster Care Agreement.



14. 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.”

15. The subject child was abandoned immediately after birth in a hospital in Kiambu County in the Republic of Kenya. I therefore declare the child to be a Kenyan citizen by birth.

16. Efforts to trace the Childs biological mother/relatives have borne no fruit. To date no person has come forward to claim the child. A final police letter dated April 8, 2017 is annexed to the summons (Exhibit 5).

17. Given the fact of her abandonment, I find that there exists no known person from whom consent for this adoption can be sought an/or obtained. Accordingly, I waive the requirement for consent in line with section 187(1)(a) *Children Act* 2022.

18. Section 8(1) of the *Children 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;

19. This is a child who was abandoned at birth. She faced an uncertain future living in various childrens Homes. This adoption accords the child the opportunity to be raised in a loving and stable home environment. The child has lived with the applicant since 2017 a period of five (5) years. I have no doubt the two (2) have bonded. The child refers to the applicant as ‘mum’.

20. A Home visit was conducted by the Childrens Department. The Applicant lives in her own house which is a four bedroomed home in Athi River. The house located is within a secure compound with adequate space and facilities for the child. The Applicant has employed a Nanny to assist in caring for the child.

21. I was able to see the child online. She was a confident, healthy young girl who referred to herself as ‘Blessed’. I have perused the Reports prepared by the Guardian Ad Litem, the Adoption Agency and the Director Childrens Services. All three reports are positive and all recommend the adoption.

22. In conclusion I am satisfied that this adoption serves the best interest of the child. Accordingly, I do allow this summons and make the following orders:-

1. The applicant, AGH, is authorized to adopt the child known as Baby MW.
2. Upon adoption the child will be known as ZNG.
3. The child is declared to be a Kenyan citizen by birth and is entitled to all the rights and privileges pursuant thereto.
3. The Registrar General is directed to make the relevant entry in the Adopted Children’s Register.
4. AWH is hereby appointed as the Legal Guardian of the child.

**DATED IN NAIROBI THIS 16<sup>TH</sup> DAY OF DECEMBER, 2022.**



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

