



**In re EL aka RB (Adoption Cause E070 of 2022)  
[2022] KEHC 16390 (KLR) (Family) (16 December 2022) (Judgment)**

Neutral citation: [2022] KEHC 16390 (KLR)

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

**ADOPTION CAUSE E070 OF 2022**

**MA ODERO, J**

**DECEMBER 16, 2022**

**IN THE MATTER OF**

**EMM ..... APPLICANT**

**JUDGMENT**

1. Before this court is originating summons dated August 31, 2021 by which the applicant seek the following orders:-
  - “ 1. That the applicant EMM be allowed to adopt the child currently identified as Baby EL aka RB.
  2. That henceforth, the child be renamed IMM.
  3. That the child's date and place of birth be declared to be June 27, 2019 at Kiambu County.
  4. That the child be presumed to be a Kenyan citizen by birth, and consequently, entitled to all the rights and benefits in respect thereof.
  5. That consent of the child's biological parents/guardians be dispensed with.
  6. That DMM be appointed as legal guardian of the child, in the event that the applicant herein is incapacitated or in any way unable to discharge her parental obligations.
  7. That the *guardian ad litem* be discharged.
2. The application was supported by the statement of even dates sworn by the applicant. The matter was canvassed by way of *viva voce* evidence on the virtual platform.



3. The applicant EMM told the court that she has never been married and has no biological child of her own. The applicant has a daughter aged five (5) years whom she adopted in January 2020. She now wishes to adopt the subject child in order to expand her family.
4. The applicant confirmed that she understands the legal implications of an adoption order. She undertook to accord to the subject child all the rights, which are due to a biological child including the right to inherit.

### **Analysis and Determination**

5. I have carefully considered this application for adoption the evidence adduced in support thereof as well as the various reports filed in court. The prerequisites for before an adoption order can be made are set out in section 184 (1) (a) and (b) of the *Children's Act 2022*: -

- “(1) A person shall not commence any arrangements for the adoption of a child unless—
- (a) The council, in accordance with the rules, has declared the child free for adoption; and
  - (b) The child has attained the age of six weeks.”

6. The subject child was born on June 27, 2019. Annexed to the summons is a copy of her birth certificate serial number xxxx (Annexure EM '19'). As such, the child is now aged approximately three (3) years old and is above the six (6) week age limit provided for in law.
7. Buckner Kenya Adoption Services, which is a registered adoption agency have annexed to their report dated October 30, 2020, the original copy of their certificate serial number xxxx dated November 13, 2020 (Annexure EM '30') declaring the child free for adoption. Accordingly, I am satisfied that all the legal prerequisites for an adoption have been met.
8. The duty of this court is to analyze the evidence on record to determine whether the applicant is suitable adoptive parent. The applicant is a Kenyan citizen as evidenced by the annexed copies of her national identity cards. (Annexure 'EM 5').
9. The applicant has never been married and has no biological child of her own. However, the applicant does have a daughter aged five (5) years whom she legally adopted in January 2020. A copy of the adoption order issued on January 30, 2020 in Adoption Cause No 185 of 2018 is annexed to the summons (Annexure 'EM-6'). The applicant now wishes to adopt another child in order to expand her family.
10. The applicant is in gainful employment as an employee of the [particulars withheld]. She has annexed copies of her payslips, which indicate that the applicant earns a salary of approximately Kshs 950,000. The applicant also annexed copies of bank statements in respect of an account, which she holds with the KCB (Annexures '8B'). I am satisfied that the applicant is financially secure.
11. The applicant is a committed christian and intends to raise the child in the christian faith. Annexed to the summons is a letter of recommendation written by Pastor Daniel Huffstutler of Redeemed Bible Church (Annexure 'EM4'). The applicant was examined by a doctor and was found to be in good mental and physical health.
12. The applicant has also annexed a copy of a clearance certificate issued to her by the Directorate Criminal Investigations confirming that she has no criminal record (Annexure 'EM 10').



13. The applicant told the court that her family are aware of and support her intention to adopt the subject child. She has appointed her younger sister DMM to be the legal guardian for the child. The proposed legal guardian has signed a consent dated November 4, 2020 (Annexure 'EM 13B') confirming her willingness to act as legal guardian in the event of the death or incapacity of the applicant.
14. The applicant is not new to parenting an adopted child. She has been raising a daughter whom she adopted in the year 2020. The report filed by the Adoption Agency indicates that the said daughter is thriving. All in all I am satisfied that the applicant are suitable adoptive parent.
15. The subject child was found abandoned in a public toilet on February 18, 2020 at the Christina Gardens in Thika Town. The baby was rescued by a good samaritan who reported the abandonment at Thika Police Station vide OB Number 112 of June 26, 2019.
16. The baby was taken to Thika Level five Hospital where she was admitted for observation and was later taken to Orphan Childrens Centre. On August 13, 2022, the Thika Childrens Court committed the child to Orphan Childrens Centre For Care and Protection. Thereafter on March 6, 2021 the child was placed into the custody of the applicant under a foster care agreement.
17. Article 14 (4) of the Constitution of Kenya 2010 provides that: -
  - “(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 who was found abandoned aged only one (1) day old in the Kiambu County in the Republic of Kenya. I declare the child to be a citizen of Kenya by birth.
19. Police efforts to trace the biological mother and/or the relatives of the child have not borne any fruit. To date no person has come forward to claim the child. A copy of the final police letter dated November 19, 2019 is annexed to the summons (Annexure 'EM-28')
20. Given the fact of his 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 187(1) (a) Children Act 2022.
21. In deciding upon any matter involving a child, courts are obliged to give priority to the best interests of the said child. Section 8 (1) of the Children Act 2022 provides:-
  - “(8). In all actions concerning children, whether undertaken by public or
    - (1) private social welfare institutions, courts of law, administrative authorities or legislative bodies—
      - (a) the best interests of the child shall be the primary consideration;” (own emphasis)
22. The subject child was abandoned one day after she was born. She faced an uncertain future living in various children homes and other similar institutions. This adoption accords the child the opportunity to be raised in a stable and loving home environment. The child has lived with the applicant since March 2021. I have no doubt that she has bonded with the applicant and her family. I was able to see the child online. She was a healthy toddler who was preoccupied with playing with her elder sister.
23. A home visit was conducted by the Childrens Officer. The applicant lives in her own home at Lantana Gardens in Valley Arcade. The home is within a secure gated community with adequate space and



facilities for child. The home is in close proximity with various social amenities like schools, hospitals and shopping malls. It was found to be a suitable environment to raise a child.

24. I have considered the reports prepared by the adoption agency, the *guardian ad litem* and Director of Children Services. All three reports were positive and all recommend the adoption.
25. Finally, I am satisfied that this adoption does serves the best interest of the child. Accordingly, I allow this application and make the following orders:-
  1. The applicant EMM is authorized to adopt the child known as BABY EL aka RB.
  2. Upon adoption the child shall be known as IMM.
  3. The child is declared to be a Kenyan citizen by birth and is entitled to all the rights and privileges arising therefrom.
  4. The Registrar General is directed to make relevant entry in the adopted children register.
  5. DMM is appointed as the legal guardian of the child.

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

**MAUREEN A ODERO**

**JUDGE**

