



**In re JH (Minor) (Adoption Cause E028 of 2023)
[2025] KEHC 4284 (KLR) (2 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 4284 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
ADOPTION CAUSE E028 OF 2023**

RC RUTTO, J

APRIL 2, 2025

**IN THE MATTER OF THE CHILDREN ACT, CAP 141 OF THE LAWS OF KENYA
AND
IN THE MATTER OF ADOPTION OF JH (MINOR)**

IN THE MATTER OF

CKN APPLICANT

JUDGMENT

1. The Applicant filed an Originating Summons dated 17th November 2023, Applicant Statement in Support of the Application for an Adoption Order of even date and Affidavit in Support of the Application sworn on 17th November 2023, seeking:
 - i. That the child, the subject of this cause be presumed to be a Kenyan citizen by birth
 - ii. That the Director Immigration be authorised to issue the child with a Kenyan Passport
 - iii. That the the Applicant be authorised to adopt Baby JK to be known as TM,
 - iv. That EMN be appointed legal guardian of the child in the event of death or incapacity of the Applicant before he is of full age and fully self-reliant.
 - v. The Registrar – General be directed to enter in the Adopted Children register an entry recording the adoption
 - vi. The court be pleased to make any further orders it deems necessary.
2. The matter was canvassed by way of viva voce evidence where the Applicant, the proposed legal guardian, the Children Officer Machakos County, and an officer from the Kenya Children’s Homes testified before court.



The Child

3. It is estimated that the child (male) was born on 5th March 2022. The child was found abandoned on 6th July 2022 around Lion's area opposite Menengai High School, Nakuru County. The matter was reported to the Lions Police Patrol Base vide Occurrence Book Number 05/06/07/2022. The Sub-County Children Officer Nakuru East was involved and on 25th August 2022 the child was committed to New Life Home Trust-Nakuru as a child in need of care and protection as per the committal order issued in protection and care number E215 of 2022.
4. In accordance with section 156(1) of the *Children Act*, the Kenya Children's Home Adoption Society, a registered Adoption Agency declared the child free for adoption. On 19th April 2023 the agency issued a Certificate confirming the child's eligibility for adoption, with certificate serial number 901. This certificate was submitted to the court by an officer of the Society verifying that the legal requirements for adoption to have been satisfied.
5. Additionally, as per an agreement between the Applicant and the Kenya Children's Home dated 5th May 2023 the child was then placed under the Applicant's care.

The Applicant

6. The Applicant is Kenyan citizen, aged 41 years. She resides in Mutituni Location; [Particulars withheld] Village near [Particulars withheld] Primary school, Machakos. She is self employed running a boutique. She annexed a copy of a single business permit, as proof of her business and financial stability She has no biological children, but has an adopted daughter who currently 10 years old and in Grade 6.
7. The Applicant confirmed that she is desirous of adopting baby TM. She also stated that she is financially capable of providing for the child. She confirmed that the larger family are supportive and have accepted the child. That the child has also bonded very well with her as well as her daughter. She also confirmed that she fully understands the implications of an adoption order and the obligations therein having previous undertaken another adoption.

The Adoption Application

8. I have considered the Summons, the evidence on record as well as the various reports filed in a bid to determine whether the Applicant is a suitable adoptive parent.
9. In her statement the Applicant stated that she has previously adopted a child, currently aged 10 years. She is a business lady running a boutique. She attached a copy of her business permit, as proof of her business as a source of income. She stated that she is in good physical health and emotional fitness to parent the child, and gave an undertaking that she is a person of good character. That she is a practising Christian and worships at the [Particulars withheld] Church, Manza Sub-Pastorate Machakos.
10. The Applicant has also annexed copies of clearance certificate from the Kenya Police Service as proof that she has no criminal record. She has provided Recommendations letters as well in proof of her character and good standing.
11. The Applicant presented EMN as proposed legal guardians for the child. The said legal guardian is her sister who signed a consent dated 16th September 2022. The proposed legal guardian also testified and informed court that she is willingly taking up the role and was aware of her the roles and obligations that come up with appointment.



12. The Children Services office in their report dated 20th December 2024 recommended that the applicant be allowed to adopt the minor since among others that the bonding process had taken up well, her family have been very supportive and that it was in the best interest of the minor. This position was also reiterated by the officer from the Kenya Children’s Home through their report dated 22nd January 2024.
13. From the material availed and oral testimonies, I am satisfied that the Applicant is suited to be an adoptive parent.

Analysis and Determination

14. Article 14 (4) of *The Constitution* provides as follows:

A child found in Kenya who is, or appears to be, less than 8 years of age, and whose nationality and parents are not known, is presumed to be a citizen by birth.

15. The child was found abandoned within the Republic of Kenya a few days after he was born. I, therefore, declare that the child is a citizen of Kenya by birth.
16. All efforts by the police to trace the child’s parents/relatives have borne no fruit. I have seen the letter dated 2nd March 2023 from Nakuru Police Station, in which it is indicated that the child was brought to the Police Station by a good samaritan, having been abandoned and rescued by the good samaritan. From the various reports presented, it would seem that there exists no known person from whom consent for this adoption can be sought and/or obtained. I, therefore, waive this requirement in line with section 185 (4)(b) of the *Children Act*.
17. In deciding any matter involving a child, the court is obligated to give priority to the best interest of the child. Section 8 of the *Children Act* provides:
 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;
 2. All judicial and administrative institutions, and all persons acting in the name of such institutions, when exercising any powers conferred under this Act or any other written law, shall treat the interests of the child as the first and paramount consideration to the extent that this is consistent with adopting a course of action calculated to:-
 - a. Safeguard and promote the rights and welfare of the child;
 - b. Conserve and promote the welfare of the child; and
 - c. Secure for the child such guidance and correction as is necessary for the welfare of the child, and in the public interest.
18. This child who was abandoned soon after birth faced an uncertain future in the children’s homes and other similar institutions. This adoption, therefore, allows the child the opportunity to be raised in a stable, loving and family environment a position also alluded to by the Children Officer.



19. I have considered the Reports filed by the Adoption Agency, the Guardian ad Litem, the Director of Children Services, all of which were positive and recommended the adoption. I was able to see the child, who was very comfortable with and around the Applicant. He seemed happy and well cared for.
20. It is, therefore, my view that the adoption serves the best interests of the child.
21. Accordingly, I allow the Originating Summons and make the following orders:
- i. That the Applicant, CKN, is allowed to adopt the child currently identified as Baby TM;
 - ii. Upon adoption, the child shall be renamed as TM;
 - iii. The child is declared to be a Kenyan citizen by birth, entitled to all the rights and privileges under *the Constitution* of Kenya and all applicable laws;
 - iv. EMN is appointed as Legal Guardian of the child,
 - v. The Guardian ad Litem is hereby discharged;
 - vi. That the Registrar-General is directed to make the appropriate entries in the Adopted Children's Register;

DATED AND DELIVERED AT MACHAKOS THIS 2ND DAY OF APRIL 2025.

RHODA RUTTO

JUDGE

