



REPUBLIC OF KENYA



KENYA LAW
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**In re Baby JF (Child) (Adoption Cause E015 of 2023)
[2024] KEHC 721 (KLR) (19 January 2024) (Judgment)**

Neutral citation: [2024] KEHC 721 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
ADOPTION CAUSE E015 OF 2023
MW MUIGAI, J
JANUARY 19, 2024
IN THE MATTER OF CHILDREN ACT 2022
AND
IN THE MATTER OF BABY JF (CHILD)
BY
FMM.....1ST APPLICANT
INM.....2ND APPLICANT**

JUDGMENT

1. The Applicants, FMM – ID. Number 13XXXX19 and INM - ID. Number 23XXXX13 (“the Applicants”) sought by their application to be allowed by this Court to adopt Baby JF (hereafter “the child”).
2. Vide Originating Summons application dated 5th April, 2023 the Applicants sought among other orders; that the Applicants herein FMM and INM be authorized to adopt baby JF an infant who is to be known as EMM; that LMM be appointed as the Legal Guardian of the child upon the granting of the Adoption Order; that the child be presumed to be born in Kenya. The Applicants herein further sought orders; that NKN be appointed as the Guardian Ad Litem for Baby JF and that this Court directs the Director of Children’s Services to compile a requisite Report on the Applicants fitness to adopt the Baby JF under the Children’s Act. NKN of ID No.22XXXX43 was appointed as the Guardian Ad Litem on 12/07/2023.
3. The child (JF) the subject of the present adoption proceedings was presumably born on 27th May, 2021 in Nakuru. The child was found having been abandoned on board a passengers’ vehicle at Nyamakima stage in Nakuru at around 8.30 a.m. on 19th December, 2021 by a lady who later covertly disappeared and never resurfaced to pick the minor herein. The infant was rescued by a Good Samaritan EK of Telephone Number 0701XXXXX a staff at Nyamakima Service Line who took the infant to Bondeni Police Station accompanied by JK and AK both of Sokohum and of mobile number 0724XXXX. The matter was recorded vide OB No.25/19/2021. The Sub County Children’s Officer Nakuru East



- sought a vacancy at New Life Home Trust Nakuru for care and protection and the minor was admitted at the said home on 19th December, 2021 and named Joash Fadhili.
4. The minor was committed to New Life Home Trust – Nakuru as a child in need of care and protection at Nakuru Children’s Court on 31st January, 2022 vide Protection and Care Case No. MCP & CPS.E013 of 2022.
 5. The Bondeni Police Station in their final police letter dated 26/07/2022 confirmed that no one came forward to claim the child and their efforts to trace the kindred of the child have been futile.
 6. Kenya Children’s Home Adoption Society contacted Eunice Kingori the Good Samaritan. She reported that after she rescued the child a certain lady contacted her asking the whereabouts of the child. She shared the information with the police but unfortunately she had deleted the Tel. Number of the said lady making it impossible to contact/reach her.
 7. The minor was freed by the Kenya Children’s Home Adoption Society’s Case Committee on its sitting of 17th August, 2022 vide Certificate Declaring Child Free for Adoption Serial No.860.
 8. The following documents were availed from Kenya Children’s Homes Adoption Society for baby Joash Fadhili
 1. Age Assessment Form
 2. Initial Police Letter from Bondeni Police Station
 3. Referral letter by the Sub-County Children’s Officer – Nakuru East.
 4. Admission Form
 5. Baby assessment form
 6. Hiv rapid testifying results
 7. Committal order
 8. Final police letter from Bondeni Police Station
 9. Tracing
 10. Certificate of declaring a child free for adoption Serial No.860.
 9. The Applicants herein FMM and INM are residents of Kakuyuni in Kangundo within Machakos County. They are husband and wife - married on 15th October, 2015 as per attached copy of marriage certificate Serial Number 53XXXX06. The Applicants annexed the following documents in support of their application; Applicants copies of Identification cards Certificate of Marriage Medical Reports for both Applicants Police clearance Certificates for both Applicants County government single Business Permit Financial statement Legal Guardians letter of Consent and copies of their Identity Cards.
 10. Pursuant to Section 186 of the *Children Act* 2022 of the *Children Act*, Kenya Children’s Home Adoption Society, the relevant Adoption Society, prepared and filed in Court a favorable report in respect of the proposed adoption of the child by the Applicants.
 11. The Guardian Ad Litem, NKN also filed the statutory Report in which he noted that the proposed adoption of the child by the Applicants would be in the best interests of the child.



12. The Kenya Children's Home Adoption Society filed their report dated 28th March, 2023 in court on 24/05/2023. Mr. Ndotono the Adoption Programme Officer appeared in Court on 26th September, 2023 in respect of these Adoption Proceedings. He told the Court that the Applicants herein were vetted on 19/01/2022 and were placed with the child herein baby JF on 9/09/2022 from New Life home Trust – Nakuru. Prior to the placement the child was freed for Adoption on 17/08/2022 vide Certificate Declaring child free for Adoption Serial No.860. The child was found abandoned and the same reported to Bondeni Police Station vide OB/25/19/12/2021. The child was later admitted at New Life Trust Home and committed to the Home vide P&C No. E013/2022.
13. According to the Report the Applicants made a joint adoption application to Kenya Children's Home Adoption Society on 29/11/2021 and it was their 1st adoption. The Applicants applied to be placed with a male child with a view to eventually adopt. An Interview session was conducted on 3/12/2021 and a home assessment carried out on 29/12/2021 at their Kangundo residence. The Applicants were found eligible and were placed with the minor on 9/09/2022. The Applicants have been consistently updating the Adoption Society on the child's progress through visits on 14th October, 2022 and on 11th November, 2022. The Applicants are a couple having been married on 15/10/2005 vide Certificate of Marriage Serial No.53XXXX06. The Applicants have not been blessed with a biological child. Their motivation towards adoption is to be able to give back to the society and extend their love to a child by offering their home. The Applicants lives in their own 2 bedroomed house at Kangundo. The Applicants are in self-employment operating Electronic Shop. The Applicants are confirmed to be of good general health (medical reports are attached), they do not have Criminal Record (police clearance reports attached). The Applicants are Christians fellowshipping at Deliverance Church where both of them are deacons in their church. The Applicants extended family are supportive of the Adoption whereby LMM the proposed Legal Guardian is the 1st Applicant's elder sister together with her husband MK. They have accepted to be the Legal Guardians. They confirmed that they understand their roles as Legal Guardians. The Applicants are stable financially hence capable of taking good care of the minor adequately and holistically. Since the placement with the minor on 9/09/2022 to date the minor has indeed bonded with them and is attached to both parents and happy around them. The Adoption Agency recommended the Adoption.
14. The Director of Children's Services filed their report dated 18/09/2023 in respect of the proposed adoption of the child by the Applicants. Emily Kimanzi the Machakos Sub County Children Officer appeared in Court on 26/09/2023 in respect of the proposed adoption of the child by the Applicants. She told the Court that she visited the Applicants home in Kangundo. She found that the Applicants lives in in their own 2 bedroomed house with water and electricity. The home environment is suitable for bringing up a child. The Applicants have been married for 18 years and they are financially stable. The Applicants are in Electronic business. They have been with the child for 1 year and the bonding has taken place.
15. Similarly the Report indicated that the Applicants live in their own 2 bedroomed house constructed in their own piece of land inherited from their parents. They also practice farming around the home. They also own parcels of land in the nearby shopping Centre. The Applicants have desired to expand their family through having their own children but this has not been possible to date hence opted for adoption. They are happy now as they see the minor grow up under their care. The extended family is supportive of the adoption. They recommended the adoption.
16. The Guardian Ad Litem, NKN filed his Report dated 22nd September, 2023 in support of these Adoption proceedings. He stated that he has known the Applicants for over 10 years as they live in the same region in Kangundo. He had made regular visits to their residence the Applicants' home and observed that the child interacted/bonded well with the Applicants and refer to the Applicants as his



parents. The minor is happy and feels as part of the family. The Applicants immediate and extended family are in support of the Adoption and have fully welcomed the minor as part of the family. The Guardian Ad litem recommended the adoption.

17. The Legal Guardians MK and Lucy MM of Identification Card Numbers 91XXXX26 and 11XXXX52 respectively are a married couple (brother in law and sister to the Applicants) they filed their consents sworn on 5th April, 2023.
18. All the Statutory Reports that have been filed in respect of the proposed adoption of the child by the Applicants have recommended that this Court allows the adoption of the child. This Court has evaluated the facts of this adoption. This is a local adoption. It is evident that the Applicants has fulfilled all the legal requirements relative to the adoption of the child.
19. The home visits by the Guardian ad litem, the Adoption Society Representative and the Director of the Children's Services established that the Applicants are financially and socially stable and have emotional capability to provide for the upkeep and education of the child and give parental care. This Court observed the Applicants with the child in Court and it was evident that in the period that the Applicants have had the custody of the child, the child has bonded well. The child considers the Applicants to be his parents.

Disposition

1. On the basis of a careful examination of the documents presented before this Court as well as the observations made therein, this Court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicants. Hence, this Court allows the Applicant's application.
2. The Applicants, FMM and INM are hereby allowed to adopt Baby JF.
3. Henceforth, the child shall be known as EMM.
4. The child's date of birth is 27/05/2021 and the place of birth shall be Nakuru
5. The child is a Kenyan Citizen by birth and entitled to all rights of a Kenyan citizen.
6. MK and LMM shall be the Legal Guardians of the child should such eventuality arise.
7. This Court directs the Registrar General to duly enter this order in the Adoption Register.
8. That the Directorate of Children Services to carry out supervision on the said adoption and file a report on the ongoing safety/security of the child within one year of the Adoption in the best interests of the child under Section 8 of *Children's Act* 2022.
9. The Guardian ad litem is hereby discharged.

It is so ordered.

JUDGMENT DELIVERED SIGNED & DATED IN OPEN COURT AT MACHAKOS THIS 19TH DAY OF JANUARY, 2024 (PHYSICAL/VIRTUAL CONFERENCE).

M. W. MUIGAI

JUDGE

