



**In re F (Child) (Adoption Cause E001 of 2023)
[2024] KEHC 612 (KLR) (19 January 2024) (Judgment)**

Neutral citation: [2024] KEHC 612 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
ADOPTION CAUSE E001 OF 2023
MW MUIGAI, J
JANUARY 19, 2024
IN THE MATTER OF CHILDREN ACT 2022
AND
IN THE MATTER OF BABY F (CHILD)**

IN THE MATTER OF

JNK 1ST APPLICANT

LGN 2ND APPLICANT

JUDGMENT

1. The Applicants, JNK – ID. Number (particulars withheld) and LGN - ID. Number (particulars withheld) (“the Applicants”) sought by their application to be allowed by this Court to adopt Baby F (hereafter “the child”).
2. Vide Originating Summons Application dated 25th January, 2023 the Applicants sought among other orders; that the Applicants herein JNK and LGN be authorized to adopt baby F an infant who is to be known as PKN ; that the child PKN be resumed to be a Kenyan citizen born in Kenya; that the Director of Immigration Services do issue PKN with a Kenyan Passport and JWN be appointed as the legal Guardian of the child. The Applicants sought furthers orders that EMK be appointed as the Guardian Ad Litem in this case. EMK of ID No. (particulars withheld) was appointed by this Court as the Guardian Ad Litem on 12/07/2023.
3. The child (F) who is the subject of the present adoption proceedings was presumably born on 10/01/2018. He was found abandoned at (particulars withheld) Estate within (particulars withheld) Area Nairobi County on 16/01/2018. The child was rescued by a Good Samaritan by the name Stephen Ochieng Obonyo and his wife, residents of Hse No.(particulars withheld) and of Tel. No. (particulars withheld) who reported the matter at Makongeni Police Station. The matter was booked via OB 23/17/01/2018. On 17/01/2018 the child was rescued and placed at Child Welfare Society of



Kenya (CWSK), Mama Ngina Kenyatta Temporary place of safety for continued care and protection. Later the child was committed to Child Welfare Society of Kenya CWSK through Children's Court in Nairobi under Protection and Care No. 535 of 2018 on 3/10/2018.

4. Physical tracing was done by CWSK at (particulars withheld) Estate in Nairobi. Mr. & Mrs Ochieng the couple who reported the case stated that since the abandonment of the said child on 16/01/2018 nobody ever came to claim the child. The CWSK further embarked on tracing of the child's family through media in three consecutive publications on the Sunday standard dailies dated 4/03/2018, 30/09/2018 and 28/10/2018 but the efforts were futile. The police officers at Makongeni police station also conducted investigations to no avail as per their letter dated 6/11/2020. On 9th November, 2020 the child was declared free for adoption vide Certificate Declaring a Child Free for Adoption Serial No.0968.
5. The Kenya Children's Homes Adoption society relied on the following documents in respect of baby F
 1. Initial Police Letter from Makongeni Police Station
 2. Admission Form to Mama Ngina Temporary place
 3. Standard media advertisements
 4. Committal Order from Milimani Children's Court Nairobi
 5. Final Police letter dated 6/11/2020
 6. CWSK Adoption commitment Form
 7. Good Samaritans statement
 8. Certificate declaring a child free for Adoption Serial No. (particulars withheld).
6. The Applicants herein JNK and LGN are residents of Mavoko within Machakos County. They are husband and wife - married on 9th May, 2017 at Registrar's Office vide Certificate of Marriage Serial No.(particulars withheld). The Applicants annexed the following documents in support of their application; Applicants copies of Identification cards Medical Reports for both Applicants Police clearance Certificates for both Applicants Copy of marriage certificate Applicants photographs Legal Guardian Affidavit Copy of identification Card for the Legal Guardian Affidavit of the Guardian Ad Litem
7. 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.
8. The Guardian Ad Litem, EMK of ID No.(particulars withheld) also filed the statutory Report in which she noted that the proposed adoption of the child by the Applicants would be in the best interests of the child.
9. The Child Welfare Society of Kenya (CWSK) filed their report dated 1st November, 2021 in Court on 08/03/2023. The Report contains the Applicants information and background. The Applicants are a married couple having gotten marriage in the year 2008 under Kikuyu customary law and later solemnized their union at the Registrar office in Nairobi on 9th May, 2017 vide Certificate of Marriage Serial No. (particulars withheld). The Applicants stated that they have not been blessed with their own biological child(ren) and wanted to be placed with a child to have their family complete therefore opted for adoption. The Applicants are financially stable earning jointly a monthly estimate of kshs.40,000/- every month from the free-lance painting and leasing building equipments. They own 2 plots in



Machakos, Mavoko area where they have built their own home. The Applicants are aware of their adopted child's right to inherit their property and stated that what they own will be inherited by Baby F. 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 Jesus Exaltation Centre in Mavoko and they even dedicated the child in the church in December 2nd 2018. The Applicants have plans of enrolling the child at St. Monica Academy when he is of school going age. The Applicants live in their own one bedroomed house in Joska Machakos County with supply of their water from the borehole, use solar panel as source of lighting and the house is also well secured with a fence and a gate. The Applicants' extended family are supportive of the Adoption and the child has interacted with his cousins, aunts and uncles and has created a loving and friendly relationship with everyone in the family. The prospective Adoptive parents desire that the child would grow up to be a responsible adult and have a good life. They also wish that they complete these adoption proceedings and apply for adoption of another child. On observations during the home visits, the Applicants herein have demonstrated various competence as prospective adoptive parents as it was found that the child is happy, jovial and free with the adoptive parents. Since the placement of the child with the Adoptive parents the child has formed an identity, learned to trust the Applicants and the Applicants have accepted their role as parents by caring for the child adequately. The Adoption Agency recommended the Adoption.

10. The Director of Children's Services filed the report dated 12/07/2023 in respect of the proposed adoption of the child by the Applicants. Mr. Nathan Kyule the Matungulu Sub County Children Officer appeared in Court on 12/07/2023 in respect of the proposed adoption of the baby F by the Applicants. He told the Court that he visited the Applicants home in Joska. He observed that the Applicants live in their own 3 roomed house. The house is well furnished and suitable for the child to live in. The Applicants are from Nakuru County and have moved to Joska recently. The Applicants' relatives are supportive of these Adoption process whereby one John Waweru a brother to the 2nd Applicant and brother in law to the 1st Applicant have agreed to be the Legal Guardian of the child.
11. Similarly the Report indicated that the Applicants are a married couple vide marriage certificate Number (particulars withheld). They do not have a child of their own. The 1st Applicant is self-employed working as a painter while the 2nd Applicant works as an Administrator at St. Peris Day & Boarding School in Joska. The Applicant runs a hardware business at their home shop. Baby F was placed with the Adoptive parents for mandatory bonding period prior to Adoption on 19th of November 2018 through duly signed foster care agreement forms from the home dated the same date. The child was about 10 months during the placement period and he is about 5 years now. The Applicant's motivation for adoption is to give a child without family a family and in the process build their own family. The applicants are stable financially earning from their employment and businesses approx. Kshs.80,000/-. They own a home at Joska built within 50x100 piece of land – Title Deed No. Mavoko Town (particulars withheld). The Applicants also own a motor bike and have kept sheep(4)the Department of Children Services through Children's Officer Matungulu Sub-County finds that these adoption is in the best interest of the child. They recommended the adoption.
12. The Guardian Ad Litem, EMK filed her Report dated 25th May, 2023 in support of these Adoption proceedings. She stated that she has known the Applicants for over 6 years as they are her family friends and they worship together. Since the placement of the child the Applicants have assumed their roles as parents. The Applicants have enrolled the child to school at (particulars withheld) Day and Boarding School in PP2. The child has been introduced to the extended family members and they have accepted the child. The child has substantially bonded well with the family. The Guardian Ad litem recommended the adoption.



13. The Legal Guardian JWN of Identification Card Number (particulars withheld) (brother in law and biological brother to the 1st & 2nd Applicants respectively) he filed his Affidavit sworn on 25th January, 2023. He appeared in Court on 12/07/2023 in respect of these proceedings and stated that he is ready to take care of the child in case of any eventuality.
14. 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.
15. 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, JNK and LGN are hereby allowed to adopt Baby F
3. Henceforth, the child shall be known as PKN .
4. The child's date of birth is 10TH JANUARY, 2018 and the place of birth shall be Nairobi.
5. The child is a Kenyan Citizen by birth and entitled to all rights of a Kenyan citizen.
6. JWN shall be the Legal Guardian 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

