



REPUBLIC OF KENYA



KENYA LAW
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**In re Baby WR (Adoption Cause E116 of 2023)
[2024] KEHC 4804 (KLR) (Children's) (19 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 4804 (KLR)

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

CHILDREN'S

ADOPTION CAUSE E116 OF 2023

PM NYAUNDI, J

APRIL 19, 2024

IN THE MATTER OF THE CHILDREN ACT, 2022

AND

IN THE MATTER OF BABY WR

IN THE MATTER OF

AKN 1ST APPLICANT

KM 2ND APPLICANT

JUDGMENT

1. AKN (1st Applicant) and MKM (2nd Applicant) seek by their Originating Summons dated 21st June, 2023 to be allowed by this Court to;
 - i. Adopt Baby WR (hereafter “the child”)
 - ii. The child be called WK
 - iii. GMN and IGG be appointed Legal Guardians of the child.
 - iv. That the Registrar-General be and is hereby ordered to make the appropriate entries in the Adopted Children’s Register.
 - v. That the child be presumed to be a Kenyan Citizen by birth.
 - vi. That the child is entitled to a Kenyan Passport.
2. The Applicants are husband and wife. They are Kenyan Citizens. They celebrated their Civil Marriage on 1st May, 2004. The 1st Applicant is an employee in the National Police Service as a Police Officer whilst the 2nd Applicant is a Nurse.



3. The Applicants testified that this is their 2nd adoption since they do not have children of their own. The Applicants stated that they applied for the application jointly. They have had custody of the minor since 2017 and received him from New Life Home Trust.
4. The other adopted female child is in Form 1 and it's their wish to adopt the minor herein so that their other child has a sibling. The two have bonded well as brother and sister. They further stated that they were interviewed by the Director of Children Services and stated that they understand the nature of adoption proceedings.
5. They have the means to provide for the child.
6. The child who is the subject of the present adoption proceedings was born to SKM and JNM. It is presumed that the minor is 8 years old having been born on 5th October, 2015. The child herein was given up for adoption by his biological Father and Aunt at New Life Home Trust-Nyeri upon the demise of the minor's mother on 7th October, 2015. Upon visiting the KKPI Adoption Society, the father was taken through the Explanatory Memorandum of Acknowledgment and agreed to offer the child herein.
7. The Children's Officer was informed of the incident and managed to secure a temporary placement for the child at New Life Home Trust in Nyeri for care and protection.
8. Igembe South Children Officer, in accordance with Section 119 of the *Children Act*, committed the child to the home vide P&C No. 2/2016. The child was placed in the custody of the Applicants on 29th March, 2018 for mandatory bonding prior to adoption. He has since then been in the continuous custody and care of the Applicants. According to correspondence from relevant authorities and final Police letter dated 23rd July 2019, no one has come forward to claim the child since he was rescued. A report to that effect has been filed in Court. Thus, this Court dispenses with the consent of the child's biological parents to the proposed adoption of the child by the Applicants.
9. KKPI Adoption Society, issued a Certificate declaring the child free for adoption pursuant to Section 156(1) of the *Children Act*. The said Freeing Certificate is Serial No. 757 and the same is dated 24th February, 2021.
10. Pursuant to Section 156(1) of the *Children Act*, Mary Atati Assistant Director countersigned a report filed in Court by Damaris Kobonah, Children Officer, Milimani Children Court which was a favourable report in respect of the proposed adoption of the child by both Applicants where she stated that this being a local adoption and the child is available for adoption, the Applicants are financially stable, medically and physically fit. The Applicants have appointed their brother as the legal guardians in case of eventuality and therefore recommends adoption without any reservations.
11. The *guardian ad litem*, JNK, also filed the statutory report made under Section 188 of the *Children Act*, 2022 in which she noted that the child has bonded well with the Applicants since she has been in care and the Applicants have shown parental commitment and willingness to give her a permanent, safe and loving home therefore proposed adoption of the child by the Applicants, would be in the best interests of the child. Harriet Kihara who is a Principal Children Officer at Milimani Law Courts, also recommended for the adoption proceedings by the Applicants. It was also evident to the Court during the hearing and after interviewing the child on the virtual platform that the minor consented to the adoption proceedings and has bonded well with the adoptive parents.
12. The Applicants are of good health and financially capable of taking care of the child. They have no criminal record as evidenced by Police Clearance Certificates of the first Applicant and second Applicant of Serial Numbers PCC-AAACERC5 and PCC-AAACERI1 respectively.



13. 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 joint Applicants to adopt the child. This Court has evaluated the facts of this adoption.
14. This is a Local Adoption. It is evident that the Applicants have fulfilled all the legal requirements relative to the adoption of the child. The consent of the biological parents of the child was dispensed with since the child was abandoned at birth. This Court has satisfied itself that the Applicants are qualified and able to take care of the child.
15. The home visits by the guardian ad litem, the adoption society and the Director of the Children's Services established that the Applicants have the financial and emotional capability to provide for the upkeep and education of the child. 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 with them.
16. The proposed legal guardians GMN and IGG attended Court online and confirmed that they have given their consent to act as Legal Guardians.
17. The minor was present in Court and the Court interviewed him, it is evident that he considers the Applicants to be his parents.

Determination

18. After carefully assessing the records herein, I am satisfied that the applicants have fulfilled all the legal requirements relating to the Child's adoption. Section 186 of the [Children Act, 2022](#) provides. The court may make an adoption order on application by-
 - (1)
 - (a) Sole applicant; or
 - (b) Two spouses jointly.
 - (2) The court shall not make an adoption order in any case unless-
 - i. The applicant has attained the age of twenty-five years, but is not above the age of sixty-five years; and
 - ii. The applicant, or both of the applicants in a joint application, is more than twenty-one years older than the child.
 - (3) The restrictions in subsection (2) shall not apply in any case where a sole applicant or one of the joint applicants is the mother, father, or relative of the child.
19. This Court is alive to the jurisdiction of the High Court vide Article 165 [Constitution of Kenya 2010](#) and Section 183(1) [Children Act 2022](#). The Court is conscious of the law; Article 53 [Constitution of Kenya 2010](#), Section 8 of [Children Act 2022](#) and the [UN Convention on the Rights of the Child & African Charter on the Rights & Welfare of the Child](#) all amplify on the best interests of the child.
20. The Court has evaluated the facts of this Local Adoption from the Reports filed. It is evident that the Applicants have fulfilled all the legal requirements of a Local Adoption as required under Section 193 of the [Children's Act, 2022](#). All the necessary Reports and consents required for this Adoption have been filed.



21. 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.”

22. This Court is therefore of the opinion that this Adoption would be in the best interest of the child and allows the application with Orders that;

- a. The Applicants, AKN and MKM are hereby allowed to adopt Baby WR.
- b. Henceforth, the child shall be known as WK.
- c. His date and place of birth shall be 5th October, 2015 at Laare Health Centre.
- d. He is presumed to be a citizen of Kenya by birth.
- e. GMN and IGG are hereby appointed as Legal Guardians of the child.
- f. The Registrar General to enter this order in the Adoption Children Register.
- g. The guardian ad litem is hereby discharged.

It is so ordered.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 19TH DAY OF APRIL, 2024.

P. M. NYAUNDI

JUDGE

In the presence of:

Sylvia Court Assistant

Ms. Kemunto h/b for Mr. Ogutu for the Applicants

