



REPUBLIC OF KENYA



KENYA LAW
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**In re JA (Child) (Adoption Cause E022 of 2023)
[2024] KEHC 3660 (KLR) (11 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 3660 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
ADOPTION CAUSE E022 OF 2023
MW MUIGAI, J
APRIL 11, 2024
IN THE MATTER OF BABY JA (CHILD)**

IN THE MATTER OF

JKM 1ST APPLICANT

JNDK 2ND APPLICANT

JUDGMENT

1. The Applicants herein, JKM – ID. Number 22XXXX89 and JNDK - ID. Number 22XXXX96 (“the Applicants”) sought by their application to be allowed by this Court to adopt Baby JA (hereafter “the child”).
2. Vide Originating Summons application dated 31st August, 2023 the Applicants sought among other orders; that the Applicants herein JKM and JNDK be authorized to adopt baby JA an infant who is to be known as TK; that VMJ be appointed as the Guardian *Ad Litem* in this case, that SMM and JK be appointed as the Legal Guardians of the child and that the Director of Children’s Department investigates the case and file a report. VMJ of ID No.38XXXX00 was appointed by this Court as the Guardian *Ad Litem* on 20/11/2023.
3. The child (JA) the subject of the present adoption proceedings was presumably born on 18/03/2022. The child was found having been abandoned at Thorn Tree Area Ongata Rongai by a *boda boda* rider known as PK of Tel No. 0714XXX98. Paul Kamau in his statement stated that he was dropping a passenger when he saw something wrapped in a Maasai shuka and upon checking he found a baby who had been abandoned. The matter was reported to Rongai Police Station vide OB No.6/03/04/2022. The child was later taken to the Nairobi Women Hospital for checkup and was diagnosed with Septicaemia. The child was discharged from the hospital on April 4, 2022. On the same date the Kajjado West Children’s Officer sought a vacancy for the minor at Mahali Pa Maisha Infant Rescue Centre. The child was placed at the Centre on the same date and was named JA.



4. The minor was committed to Mahali Pa Maisha Children's Home for Care and Protection on 1/11/2022 vide Protection and Care Case No. E004 of 2022.
5. The Rongai Police Station in their final Police letter dated 19/10/2022 confirmed that no one came forward to claim the child and their efforts to trace the kindred of the child have not succeeded.
6. The Applicants were placed with baby JA from Mahali Pa Maisha Infant Rescue Centre on December 18, 2022 and have been fostering the baby since then.
7. The minor was freed for adoption by the Buckner Kenya Adoption Society's Case Committee on its sitting of 9/09/2022 vide Certificate Declaring Child Free for Adoption Serial No.0628.
8. The following documents were availed from Kenya Children's Homes Adoption Society for baby MW.
 1. Initial Police Letter from Ongata Rongai Police Station OB No. 06/03/2022.
 2. Final police letter from Ongata Rongai Police Station dated 19/10/2022.
 3. Children officer report dated 11/05/2022.
 4. Committal order to Mahali pa Maisha Children's home dated 1/11/2022, protection and care case no. E004/2022.
 5. Copy of the child's admission Form from Mahali Pa Maisha.
 6. A copy of the child's Growth record from Mahali Pa Maisha.
 7. A copy of child's health card.
 8. A copy of the child's progression Form from Mahali pa Maisha.
 9. Hospital report/discharge summary from Nairobi women hospital.
9. The Applicants herein JKM and JNDK of identification numbers 22XXXX89 and 22XXXX96 respectively and of Post Box 3XX9 – 90100 Machakos are residents of [particulars withheld] in Machakos Town within Machakos County. They are husband and wife - married on 5/07/2014 as per attached copy of Marriage Certificate Serial Number 20XX41. The Applicants annexed the following documents in support of their application; Applicants copies of Identification cards Certificate of Marriage Financial statement Medical Reports for both Applicants Police clearance Certificates for both Applicants Letters of Referees Guardian *Ad Litem* letter of consent Legal Guardians letter of Consent and copies of their Identity Cards.
10. Pursuant to 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*, VMJ of ID No.38XXXX00 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.
12. The Buckner Kenya Adoption Services filed their report dated 1/12/2023 in Court on 13/12/2023. Ms Mary Kamiri from the Society appeared in Court on 5/03/2024 in respect of these Adoption Proceedings. She told the Court that baby JA was born on 13/03/2022. The child was abandoned and rescued on 3/04/2022 by a *boda boda* rider by the name Paul Kamau of phone Number 0714XXX981. The child was admitted at Mahali Pa Maisha on 4/04/2022. The child was committed to Mahali pa Maisha on 1/11/2022 as per Care and Protection Case No. E004 of 2022. On 18/12/2022 the



Applicants herein were given the child for fostering. She further told the Court that the adoption is of the best interest of baby JA.

13. According to the Report the Applicants made a joint adoption application to Buckner Kenya Adoption Society on May 8, 2022 and it was their 1st adoption. The Applicants applied to be placed with a baby boy aged below one year. Relevant interviews and home assessment were carried out as well as the pre-adoption counselling. The Applicants were found eligible and a case Committee sitting on September 9, 2022 approved their application and were placed with the baby JA on 18/12/2022 and have been fostering the minor since then. The Applicants are a couple having been married in 2008 and later legalized their marriage in 2014 vide Certificate of Marriage Serial Number 20XX41. The Applicants are blessed with one biological child (daughter) namely JMK aged 12 years old a grade 7 pupil. The girl is aware of the adoption process and has given her consent. Their motivation towards adoption their love for children and to give a child the gift of a family.
14. The Applicants lives in their own 3 bedroomed house where they also practice subsistence farming. 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 Revival explosion Power overflow Ministries in Machakos Town (recommendation letter from the church is attached).
15. The Applicants extended family are supportive of the Adoption whereby the Applicants have appointed the SMM and JNK (the 1st Applicant's brother and sister in law) as the proposed Legal Guardians of the child. They have accepted to be the Legal Guardians and confirmed that they understand their roles as Legal Guardians.
16. The Applicants are stable financially, the male Applicant works as a soft Engineer at [Particulars Withheld] in Norway. His work is mainly online therefore he operates in Norway as well as in Kenya. He earns Kshs.500,000/- per month (financial statements attached) while the female Applicant is a business lady earning an income of Kshs.50,000/- per month. Since the placement with the minor on December 18, 2022 to date the Applicants have taken good care of baby JA and have even introduced him to their extended family who have embraced the child as part of the family. The Adoption Agency recommended the Adoption. Buckner Adoption Agency issued Certificate Declaring the Child Free For Adoption Serial No. 0628 dated 4/11/2022.
17. The Director of Children's Services filed their report dated 04/03/2024 in respect of the proposed adoption of the child by the Applicants. Emily Kimanzi the Machakos Sub County Children Officer appeared in Court on 5/03/2024 in respect of the proposed adoption of the child by the Applicants. She told the Court that the Applicants now have two biological children, the 2nd child born being born when this process has been ongoing. The Applicants have been living with Baby JA for 1 year, 1 month and the bonding process has been successful. The Applicants family is also supportive of the adoption process.
18. Similarly the Report indicated that during the home visits it was observed that the Applicants lives in a 3 bedroomed house at kwa Mwau within Machakos with water and electricity. The Applicants have another home in their rural home at Makueni, have inherited 12 acres of land in Makueni from their parents and have also bought 5 plots in different parts of Makueni County though not developed. The Applicants had one biological daughter JM (aged 12 years old) and when they began the process of adoption they were able to sire another biological daughter JSN (aged 4 months old). They decided to complete the adoption process even after getting another biological child. The Applicants intend to make the minor one of their heirs, give him a good life and education so that he can achieve his



fullest potential. The extended family is supportive and have welcomed the minor into the family. They recommended the adoption.

19. The Guardian *Ad Litem*, VMJ of ID No. 38XXXX00 filed her Report dated 20/11/2023 in support of these Adoption proceedings. She appeared in Court on 5/03/2024. She told the Court that the Applicants are her friends and neighbours at Kwa Mwau and they have known each other for over 5 years. The child is well taken care of. Similarly the report indicated that during the home visits it was observed the Applicants have bonded well with the minor. The Applicants have support from both the immediate and extended family which has fully welcomed the minor as part of the family. The Guardian *Ad Litem* recommended the adoption.
20. The Legal Guardians SMM and JNK - of Identification Card Numbers 11XXXX40 and 11XXXX23 respectively are a married couple (brother and sister in law of the 1st Applicant) they filed their Affidavit of Fitness and Consent both sworn on 31/08/2023 and filed in Court on 07/09/2023 stating that they will take over the care of the child in case of any eventuality.
21. JMK the Applicants biological daughter appeared in Court on 5/03/2024. She told the Court that she is aged 12 years. She schools at [Particulars Withheld] Secondary school. She stated that she is very happy to have a younger brother and she will take care of him.
22. 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.
23. 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

24.

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.
3. The Applicants, JKM and JNDK are hereby allowed to adopt Baby JA.
3. Henceforth, the child shall be known as TK.
4. The child's date of birth is March 18, 2022 and the place of birth shall be Ongata Rongai.
5. The child is a Kenyan Citizen by birth and entitled to all rights of a Kenyan citizen.
6. SMM and JK 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 11TH DAY OF APRIL, 2024 (PHYSICAL/VIRTUAL CONFERENCE).

M. W. MUIGAI

JUDGE

In the presence of:

No Appearance- for the Applicants

Geoffrey/Patrick - Court Assistant(s)

