



REPUBLIC OF KENYA



**In re Baby MBO (Adoption Cause E086 of 2023)
[2024] KEHC 4000 (KLR) (Family) (5 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 4000 (KLR)

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

FAMILY

ADOPTION CAUSE E086 OF 2023

PM NYAUNDI, J

APRIL 5, 2024

IN THE MATTER OF THE CHILDREN ACT, 2022

AND

IN THE MATTER OF BABY MBO

BY

CWK (1ST APPLICANT) AND JNW (2ND APPLICANT)

JUDGMENT

1. CWK (1st Applicant) and JNW (2nd Applicant) seek by their Originating Summons dated 18th May, 2023 to be allowed by this Court to;
 - i. Adopt Baby MBO (hereafter “the child”)
 - ii. The child be called GK
 - iii. That the Registrar-General be and is hereby ordered to make the appropriate entries in the Adopted Children’s Register.
 - iv. Lydia Wanja Wachira be appointed Legal Guardian of the child.
 - v. That the child be presumed to be a Kenyan Citizen by birth.
2. The Applicants are husband and wife. They are Kenyan Citizens. They got married through a Civil Marriage in 2009 and later celebrated their marriage on 24th April, 2019 as per attached Marriage Certificate Serial Number X at the Registrar’s Office in Embu West County.
3. The Applicants are business people based in Nyeri County. It’s the Applicants statement that they do not have children of their own due to reasons beyond their control.



4. The Applicants stated that they applied for the application jointly, it's their averment that they have lived with the minor and they have the means to provide for the child. Subsequently, the Applicants wish to appoint Lydia Wanja Wachira as the legal guardian of the minor in case of any eventuality. The Applicants further stated through their statement that they informed their immediate family and close friends on their intention to adopt the minor herein where they consented to the adoption proceedings.
5. The child who is the subject of the present adoption proceedings is presumed to be 5.8 years old having been born on 28th February, 2018. The child herein was abandoned after birth at Kadel Police Patrol Base at the gate. A report on the incident was made to Kendu Bay Police Station on 22nd May, 2018 and was recorded Vide OB No. 2/17/5/18. On the same day, 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 Kisumu for care and protection.
6. The Magistrate Children's Court sitting at Oyugi, in accordance with Section 119 of the [Children Act](#), committed the child to the home on 22nd May, 2018 vide P&C No. 15/2018. The child was placed in the custody of the Applicants on 1st October, 2021 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.
7. Buckner Kenya 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. 0633 and the same is dated 15th November, 2021.
8. Further, the Applicants sought among others, orders from this Court that Pamela Msyikuba Shikhule be appointed as the child's guardian *ad litem*, and that the Director of Children's Services be ordered to investigate the suitability of the Applicants to adopt the child and submit a report within 45 days.
9. They further sought for the appointment of Lydia Wanja Wachira as a Legal Guardian of the minor in the event of any eventuality who via online platform in Court averred that 1st Applicant is his brother-in law and the 2nd Applicant is her sister and therefore accept the adoption proceedings.
10. Pursuant to Section 156(1) of the [Children Act](#), before this matter came up for hearing, the relevant adoption society, prepared and filed in Court a favourable report in respect of the proposed adoption of the child by both Applicants. Another report in respect of the proposed adoption of the child by the Applicants was prepared by the Ezekiel Kimani, Assistant Director Children's Services and this report was similarly in favour of the proposed adoption as he stated that this being a local adoption and the child is available for adoption, he recommends adoption without any reservations. The guardian *ad litem*, Pamela Msyikuba Shikhule, 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. It was also evidence in Court via online platform where the same relevant authorities consented to the adoption proceedings.
11. 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-AAAIRM4 and PCC-AAAITJK7 respectively.



12. 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.
13. 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.
14. 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.
15. The proposed legal guardian attended Court and confirmed that she has given her consent to act as Legal Guardian.
16. The minor was present in Court and the Court interviewed him, it is evident that he considers the Applicants to be his parents.

Determination

17. After carefully assessing the records herein, I am satisfied that the applicant has 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.
18. 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.
19. 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.



20. 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.”

21. 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, CWK and JNW are hereby allowed to adopt Baby MBO .
- b. Henceforth, the child shall be known as GK .
- c. His date of birth shall be 28TH february, 2018 and place of birth Kendu Bay
- d. He is presumed to be a citizen of Kenya by birth.
- e. LWW is hereby appointed as Legal Guardian 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 5TH DAY OF APRIL, 2024.

P. NYAUNDI

JUDGE

In the presence of:

Sylvia Court Assistant

