



**In re MI alias VN (Baby) (Adoption Cause E223 of 2023)
[2024] KEHC 3324 (KLR) (Family) (5 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 3324 (KLR)

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

FAMILY

ADOPTION CAUSE E223 OF 2023

PM NYAUNDI, J

APRIL 5, 2024

N THE MATTER OF THE CHILDREN ACT, 2022

AND

IN THE MATTER OF BABY MI ALIAS

VN

BY

WO (1 ST APPLICANT) AND RMN (2 ND APPLICANT)

JUDGMENT

IN THE MATTER OF

WO 1ST APPLICANT

RMN 2ND APPLICANT

JUDGMENT

1. WO (the 1st Applicant) and RMN (the 2nd Applicant) seek by their Originating Summons dated 30th October, 2023 to be allowed by this Court to;
 - i. Adopt Baby MI alias VN (hereafter “the child”)
 - ii. The child be called ZMNO
 - iii. That the Registrar-General be and is hereby ordered to make the appropriate entries in the Adopted Children’s Register.
 - iv. DN 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 Citizen. They got married through a traditional marriage in 2006 and later celebrated their marriage on 16th September, 2022 as per attached Marriage Certificate Serial Number 53XXX2 at the Registrar's Office in Nairobi County.
3. The 1st Applicant is a business man dealing with Construction while the 2nd Applicant is a banker at [Particulars Withheld] Bank. It's the Applicants averment that they are blessed with one biological child by the name NK born on 17th December, 1999. However, they have a long period had desire to adopt a child and aspired to change vulnerable children destinies, committing to offer a child a loving and caring home hence the need to adopt the minor herein.
4. According to the Applicants statement they have informed their biological son on the intention to adopt as well as their immediate family and close friends and they fully consented to the adoption proceedings.
5. Through the online platform on viva voce evidence, the Applicants stated that they applied for the application jointly, it's their averment that they have lived with the minor since 21st July, 2023. They further stated that they understand the legal implications of an adoption order and they have the means to provide for the child.
6. Baby MI alias VN (the child herein) who is the subject of the present adoption proceedings is presumed to be 1 year 5 months' year old having been born on 6th September, 2022. The child herein was born to VNC of ID Number 310XXXX1. It is stated that the biological mother of the minor approached the hospital's social worker and indicated that she wanted to give the child up for adoption because she was unable to care for the minor.
7. On the 8th September, 2022 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 Nakuru for care and protection awaiting adoption.
8. The Magistrate Children's Court sitting at Nakuru, in accordance with Section 119 of the *Children Act*, committed the child to the home on 24th October, 2022 Vide P&C No. E286/22. The child was placed in the custody of the Applicants on 21st July, 2023 for mandatory bonding prior to adoption.
9. He has since then been in the continuous custody and care of the Applicants. According to correspondence from relevant authorities, VNC, the biological mother of the minor herein was referred to Bondeni Children's Office which they linked her with Change Trust Adoption Society and it's at that point she signed the Form for Social Inquiry, Explanatory Memorandum for Biological Parents as well as a Certificate of Acknowledgment and a final signed consent from her thereby the Change Trust Adoption Society declared the child free for adoption. Thus, this Court dispenses with the consent of the child's biological parents to the proposed adoption of the child by the Applicants.
10. The Change Trust 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. 00XXX7 dated 11th November, 2022.
11. PMS was appointed by the Court Order on 16th November, 2023 as the child's guardian ad litem, and directed the guardian ad litem, the Director of Children's Services to file their respective reports in Court within 45 days.
12. Pursuant to Section 156(1) of the *Children Act*, before this matter came up for hearing, Carolyne Olilo from Children's Services, prepared and filed in Court a favourable report in respect of the proposed



- adoption of the child by both Applicants where she stated that the Applicants have always wanted a big family, they are capable of taking care of the minor financially hence recommends for the Adoption.
13. The guardian ad litem, PMS, 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 as well as extended family members and makes frequent visits to their rural homes. She further stated that she has no reservation in recommending the adoption of Baby MI by the Applicants as it would be in the best interest of the child. It was also evidence in Court via online platform where the same relevant authorities consented to the adoption proceedings.
 14. 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-DETXXXX9 and PCC-V5XXXXY7 respectively.
 15. 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.
 16. 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.
 17. 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.
 18. The proposed legal guardian attended Court and confirmed that she has given her consent to act as Legal Guardian.
 19. The child recognizes the Applicants as his parents.

Determination

20. 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.



21. 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.
22. 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.
23. 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.”
24. 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, WO and RMN are hereby allowed to adopt BABY MI alias VN.
 - b. Henceforth, the child shall be known as ZMNO.
 - c. His date of birth shall be 6TH September, 2022 and place of birth Nakuru
 - d. He is presumed to be a citizen of Kenya by birth.
 - e. DN 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

Ms Ambaka for Applicant

