



REPUBLIC OF KENYA



**In re ZM (Baby) (Adoption Cause E132 of 2023)  
[2024] KEHC 4742 (KLR) (Family) (3 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 4742 (KLR)

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

**FAMILY**

**ADOPTION CAUSE E132 OF 2023**

**PM NYAUNDI, J**

**MAY 3, 2024**

**IN THE MATTER OF THE CHILDREN ACT, 2022**

**AND**

**IN THE MATTER OF BABY ZM**

**IN THE MATTER OF**

**SML ..... 1<sup>ST</sup> APPLICANT**

**RLD ..... 2<sup>ND</sup> APPLICANT**

**JUDGMENT**

1. By vide Originating Summons, dated 12<sup>th</sup> July, 2023 the Applicants herein seeks the following orders, that:-
  - i. To Adopt Baby ZM (hereafter “the child”)
  - ii. The child be called ESL
  - iii. That the Registrar-General be directed to make the appropriate entries in the Adopted Children’s Register.
  - iv. The child be presumed to be a Kenyan Citizen by birth
  - v. JFJL and VGAB be appointed as Legal Guardian of the minor.
2. The Applicants are Kenyan Citizens by birth. They celebrated their marriage on 17<sup>th</sup> April, 2019 as per the marriage Certificate Serial Number 00xxxx. The 1<sup>st</sup> Applicant is an Electrical Engineers by Profession and he is a Director in his Company while the 2<sup>nd</sup> Applicant is self-employed and a Director of her Company.



3. It's their averment that the wish to have their own children borne no fruits due to reasons beyond their control hence made an application to Little Angels Network seeking to adopt the child herein.
4. At the online platform in Court, the Applicants stated that the minor has been in their custody for 1 year. They further stated that their family and close friends supported the adoption process and it's their statement that their understands legal implications of an adoption order. The Applicants have the means to provide for the child.
5. The Applicants averred that after making an application to Little Angels Network, New Life Home, Trust, Kilimani, placed the minor herein into their custody on 31<sup>st</sup> March, 2023 for fostering for a period of three months with a possibility of adoption the minor.
6. The Child herein (Baby ZM ) is the subject of the present adoption proceedings is presumed to be 2 years old having been born on 22<sup>nd</sup> March, 2022. The child was found abandoned at (Particulars withheld) Hospital On 15<sup>th</sup> April, 2022 by CW . Its CW statement that the biological mother of the minor requested her to hold the minor so that the biological mother would answer the call of nature but she never returned to collect the minor herein. Ms. CW reported the matter at Kihara Police Station and was recorded vide OB No. 11 & 15/xx/xx/0/2022.
7. The Kiambaa Sub-County Children Officer sought a vacancy for the child who was referred to New Life Children's Home for care and protection and this is evidenced by the child's admission form into the said children center dated 15<sup>th</sup> April, 2022.
8. Subsequently, the Children's Court sitting at Kiambu in accordance with Section 119 of the [Children Act](#) 2022, committed the child to New Life Children's Home on 20<sup>th</sup> September, 2022 vide Protection and Care Case No. E073/2022. The child was placed in the custody of the Applicant on 31<sup>st</sup> March, 2023 for mandatory bonding prior to adoption. The minor has since then been in the continuous custody and care of the Applicants and has since enjoyed the parental love, care and good nurturing accorded to him by the Applicants.
9. According to correspondence from relevant Investigating Officers no one has come forward to claim the child and that the efforts to trace the mother or the child's relatives have been futile.
10. Consequently, Kenya Children's Home 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.886 and the same is dated 15<sup>th</sup> February, 2023.
11. An application dated 12<sup>th</sup> July 2023, the Applicants sought orders that Pamela Shikhule be appointed as the child's guardian ad litem and the Director of Children's Services be ordered to investigate the suitability of the Applicants to adopt the child and submit report.
12. On 5<sup>th</sup> October, 2023 this Court issued an order appointing Pamela Shikhule as the child's guardian ad litem and further directed that she and the Director of Children's Services to file their respective reports in Court within 45 days.
13. Pursuant to Section 156(1) of the [Children Act](#), before this matter came up for hearing, Mr. Nyaranga Odunod Children's Officer prepared and filed a favourable report on 4<sup>th</sup> December, 2023 and the same was countersigned by Nancy Waswa the Nairobi County Coordinator Children's Services in respect of the proposed adoption of the child by the Applicants where he stated that the Applicants have met the requirements for local adoption as provided in the [Children Act](#) and other enabling provisions of the law. The Applicants are financially stable to take good care of the child. They have financial ability to cater for material needs of the child herein. The Applicants further appointed JFJL and VGAB



who are their family friends of more than 9 years to be their legal guardians of the child in case of any eventuality arises. They understand what the role entails in the event of eventuality, they will take on full parental responsibility and having the minor being declared free for adoption by Kenya Children's Home Adoption Society, he recommends the Applicants to adopt the child.

14. Additionally, a similar favourable report from Adoption Society also stated that the minor has been under the care and control of the Applicants. The Applicants wants to expand their family by adopting a child and they have the means to adequately and sufficiently provide for a child. They have good family ties and good friends who have offered and continue to offer support during the adoption process hence recommended for the adoption as it will be in the best interest of the child to be adopted by the Applicants.
15. The guardian ad litem Pamela Shikhule also filed a statutory report on 22<sup>nd</sup> November, 2023 under Section 188 of the *Children Act*, 2022 in which she observed and stated that the child feels safe and loved by the Applicants. She also reiterated that the child has a good bond with other extended family members and makes frequent visits therefore recommended the adoption of Baby ZM by the Applicants.
16. 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 Serial Numbers PCC-8JTxxxx and Serial Numbers PCC-OLTxxxx.
17. All the Statutory Reports that have been filed in respect of the proposed adoption of the child by the Applicants and have recommended that this Court allows the Applicants to adopt the child. This Court has evaluated the facts of this adoption.
18. 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.
19. The home visits by the guardian ad litem 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 him.
20. The proposed legal guardians attended Court and confirmed that they have given their consent to act as legal guardians in case of any eventualities.

### **Determination**

21. 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.
22. 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.
23. 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.
24. 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.”
25. 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 SML and RLD are hereby allowed to adopt BABY ZM .
  - b. Henceforth, the child shall be known as ESL.
  - c. His date of birth shall be 22<sup>ND</sup> MARCH, 2022
  - d. He is presumed to be a citizen of Kenya by birth.
  - e. JFJL AND VGAB are hereby appointed as Legal Guardians of the child
  - f. The Director Immigration is authorised to issue the child with a Kenyan Passport.
  - g. The Registrar General to enter this order in the Adoption Children Register.
  - h. The guardian ad litem is hereby discharged.

It is so ordered.

**SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 3<sup>RD</sup>**

**DAY OF MAY, 2024.**

**P. NYAUNDI**

**JUDGE**

In the presence of:

Fardosa Court Assistant

