



**In re Baby BI (Adoption Cause E001 of 2022)  
[2024] KEHC 10061 (KLR) (24 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 10061 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
ADOPTION CAUSE E001 OF 2022  
RM MWONGO, J  
JULY 24, 2024  
IN THE MATTER OF ADOPTION OF BABY B I**

**IN THE MATTER OF**

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

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

**JUDGMENT**

1. The applicant’s originating summons herein, is dated 11<sup>th</sup> December, 2023. In it, they seek to be authorized to adopt the child, Baby B I to be known as BMN. The application also seeks orders that: The child’s date of birth be declared to be 31<sup>st</sup> January, 2017 at Nairobi County; that the child be presumed to be a Kenyan citizen by birth; That consent of the child’s biological parents/guardians be dispensed with; That JWN be appointed as legal guardian of the child in the event that the applicants herein are incapacitated or in any way unable to discharge their parental obligations; and That the Registrar General be directed to enter this adoption into the Register of Adoptions.
2. The application is supported by the statement of RNK and SWN on the following grounds:
  - i. That the applicants have met the legal prerequisites set out for adopting a child and has sufficiently bonded with the child for over three months.
  - ii. That the child has thrived under their care and identifies with the applicant as his parent.
  - iii. That it is in the best interest of the child that the adoption order be granted in favour of the applicant.
3. Further, there is attached an affidavit of consent by RKW dated 11<sup>th</sup> March, 2022 to act as guardian ad litem of Baby B I.



## Background of the Applicants

4. The applicants in their statement dated 11<sup>th</sup> March, 2022 state that they have met the legal prerequisites set out for adopting a child and have sufficiently bonded with the child. They assert that it is in the best interest of the child that the adoption order be granted in favour of the applicants.
5. In addition, the applicants state that they are Kenyan citizens of sound mind; aged 50 and 49 years old, respectively, having been born in 1970 and 1971. They reside in Githure, Kirinyaga County in their 4 bed-roomed house. They got married under Kikuyu Customary Law in 1995 and solemnized their vows on 8<sup>th</sup> December, 2001. They are blessed with two children, JWN, 24 years old and Caroline Karimi Nyaga aged 20 years. They have given written consent to the adoption as evidenced in letters dated 3<sup>rd</sup> April, 2019. Their motivation to adopt a child is love.
6. They state that they are in good health and financially stable considering that they have steady income from their businesses and farm; that they have never been charged with nor convicted of a criminal offence referred to in the Third Schedule of the *Children's Act*. They have attached their Police Clearance Certificates dated 2<sup>nd</sup> May, 2019.
7. They have proposed JWN as the legal guardian of the child in the event of her death or incapacity before the child is of full age and fully self-reliant, and that their current residence is a comfortable environment for nurturing the child. They love the child they intend to adopt.

## The child

8. The subject, Baby B I, is a baby estimated to have been born on 31<sup>st</sup> January, 2017. On 30<sup>th</sup> January, 2018, the child's mother abandoned him in a vegetable kiosk operated by Ruth Kahozela Musela at Pipeline Estate. She reported the abandonment at Embakasi Police Station which report was recorded in OB 30/30/01/2018. The child was admitted to Imani Children's Home.
9. On 6<sup>th</sup> June, 2018, the Children's Office through Protection & Care Case No 190 of 2018 successfully applied to the children's court in Nairobi for committal of the child into the custody of Imani Children's Home.
10. The Embakasi Police Station have confirmed that they have not managed to trace the biological parents of the child, and that no person or relative has claimed the child since he was rescued and committed to the children home.
11. The child's history was reviewed by K.K.P.I Adoption Society Committee and declared free for adoption on 7<sup>th</sup> August, 2019. This is evidenced by Certificate of Freeing a Child for Adoption Serial Number 665.
12. Upon instituting adoption proceedings, the applicant sought the appointment of RKW as the guardian ad litem vide Chamber Summons dated 11<sup>th</sup> March, 2022. The same was confirmed through a Court Order dated 23<sup>rd</sup> May, 2023. Following the appointment, on 21<sup>st</sup> May, 2024 this court received that the Guardian ad Litem report and the Children Department assessment and evaluation report had been filed. Both reports recommended this prospective adoption.
13. The Children Officer's Report filed on 11<sup>th</sup> December, 2023 states that the Children's Department has no objection to the adoption.
14. Having considered the application herein, and the affidavits in support together with the annexures thereof, I note that this is a local adoption by Kenyan citizen applicant.



Section 181 (1) of the *Children's Act*, 2022 provide that-

“Any child who is resident within Kenya may be adopted whether or not the child is a Kenyan citizen, or was or was not born in Kenya.”

15. The child is above six (6) weeks and below 18 years which is the requisite age bracket for a child to qualify for adoption (see Section 184 (1) of the *Children's Act*). He has been declared free for adoption and effectively placed under the care and control of the applicant for a continuous period of three months pursuant to Section 184(1) of the *Children's Act*.
16. The applicants are Kenyan Citizen adults aged below 65 years and above 25 years, being the mandatory age requirement for any adoptive parent seeking to adopt a baby pursuant to Section 186(1)(2) of the *Children's Act*. They have been assessed and evaluated by various stake holders and found suitable in terms of the set criteria. They are financially stable, physically, mentally, morally, socially and emotionally fit. Further, they have no criminal record and do appreciate the consequences of adoption. In the circumstances, the applicants have met the necessary legal requirements to adopt the baby. This has been confirmed by Director, Children Services report filed on 11<sup>th</sup> December, 2023.
17. The main factor for consideration before making any decision affecting the affairs of a child is what is the child's best interest. This principle is articulated under Article 53(2) of the *Constitution* and Section 4(2) and (b) of the *Children's Act*.
18. *In re RN (Baby)* [2020] eKLR it was held that:

Through an Originating Summons dated 11<sup>th</sup> July 2019 and filed on 18<sup>th</sup> July 2019, P.W.I and R.M.W herein referred to as the 1<sup>st</sup> and 2<sup>nd</sup> applicants respectively, moved this court pursuant to Sections 154, 156, 158(1) & 4(a), 160, 163, 170 of the *Children's Act* and Section 9 of the *Citizenship and Immigration Act* seeking orders as follows;

- (i) That they be authorized to adopt baby R. N and that the said child be known as SPIW.
- (ii) That the child having been found abandoned at Kaaga area Imenti North in Meru be presumed to be a Kenyan citizen born on xxxx in Meru.
- (iii) That BNM and EGK of Post Office Box Number 21 Ngegwa be appointed legal guardians to the child in the event misfortunate befalls the applicants.
- (iv) That the consent of the biological parents be dispensed with.
- (v) That the Registrar General makes the appropriate entries into the Adopted Children Register.

The court held that: It is my holding that the adoption herein is in the best interest of the child. Accordingly, the application is allowed with orders as follows;

- a) That the applicants are hereby authorized to adopt baby R.N who henceforth shall be known as SPIW.
- b) That the child is presumed to be a Kenyan citizen.
- c) That his date of birth shall be xxx and place of birth Meru County Kenya.
- d) That the consent of his biological parents is dispensed with.



- e) That the Registrar General is directed to enter the adoption order in the Adopted Children's Register.
- f) That the guardian ad litem is hereby discharged.
- g) That BNM and EGK be and are hereby appointed as legal guardians to the child in the event of death or eventuality befalling the applicants.

### **Disposition**

19. Having been satisfied that all the required documents have been availed and parameters met, this court is satisfied that this is a case where the best interest of the child would be achieved through an adoption.
20. Pursuant to Section 183 (1) *Children Act*, 2022 which mandates the Court to make an adoption Order the Court is satisfied that such an order is for the best interest of the child and is hereby made.
21. Accordingly, the Court makes the following orders:
  1. That RNK and SWN be and are hereby allowed to adopt the child known as Baby Baraka Imani.
  2. That henceforth the child be and is hereby renamed BWN.
  3. That the child date of birth is declared to be 31<sup>st</sup> January 2017 at Nairobi.
  4. That the child be presumed to be a Kenyan Citizen by birth.
  5. That consent of the child's biological parents/guardians be dispensed with.
  6. That JWN is hereby appointed as Legal Guardian of the child in the event that the applicants herein are incapacitated or in any way unable to discharge their parental obligations.
  7. That the guardian ad litem is hereby discharged.
  8. That the Registrar General is hereby directed to make the appropriate entries in the Adopted Children Register.
22. Orders accordingly.

**DATED AT KERUGOYA THIS 24<sup>TH</sup> DAY OF JULY, 2024**

**R. MWONGO**

**JUDGE**

Delivered in the presence of:

1. Kimenyi for Applicants
2. Court Assistant, Murage

