



**In re AM alias BL (Minor) (Adoption Cause E004 of 2024)
[2024] KEHC 8437 (KLR) (12 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 8437 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
ADOPTION CAUSE E004 OF 2024
HM NYAGA, J
JULY 12, 2024**

IN THE MATTER OF AN APPLICATION TO ADOPTION OF A.M. ALIAS B.L(MINOR)

IN THE MATTER OF

PWK APPLICANT

JUDGMENT

1. Vide an Originating Summons dated 28th February 2024 brought under sections 8 & 183 of the *Children's Act* 2022, section 9 of the Kenya Citizenship and Immigration Act No.12 of 2011 & Section 14, Constitution of Kenya 2010, the applicant herein seek, among other orders, the authority to adopt the minor, A.M.
2. According to court documents, the background to this cause is that the child was abandoned on 17th February 2015 at (Particulars withheld) market, Masinga Sub County. The child was placed at a temporary center at Mama Ngina Children's Home and a report was made at Masinga Police Station vide O/B No. 09 of 18th February 2018. Subsequently, the child was committed to the same center through Kithimani Children's Court C&P no. 5 of 2015.
3. Attempts to seek the child's biological mother were futile and by the date of application, no one had come forth to claim her.
4. The applicants filed together with the originating summons, inter alia the following supporting documents; Chamber summons for application of guardian Ad Litem & report by the director of Children Services Affidavit of fitness of the proposed guardian Ad Litem Consent of Guardian Ad Litem Original Summons Statements of facts Affidavit in support Annexures Report from the adopting society, Certificate freeing child for adoption to be annexed
5. Mary Wanjiru Kibicho, was appointed to act as guardian Ad Litem following a court order issued on 17th April 2024. She filed her Affidavit of Consent and a confidential report approving the adoption.



6. The proposed legal guardian similarly filed her affidavit. A pursual of the same shows that he understands his responsibilities as a legal guardian as stated in Section 122 of the [Children's Act](#) 2022. She also filed a consent to act as a legal guardian.
7. Child Welfare Society of Kenya (CWSK) filed their report dated 26th November 2019 declaring the child free for adoption.
8. The said report says that the child's approximate date of birth is 17.02.2015 and was abandoned on 17.02.2015 at (Particulars withheld) market, Masinga sub county and taken to Masinga Police Station by a good Samaritan. The matter was booked vide OB No. 09/18/02/2015 at the said station. The child was rescued and committed through Kithimani Law Courts to Mama Ngina Children's Home under protection number 5 of 2015 as the investigations into the child's case was being carried out by police officers from Masinga Police Station.
9. The CWSK engaged both social media and media tracing with the aim of finding the child's family and reunifying her with them ,thus ensuring family preservation. These engagements were done through the media publications on The Sunday Nation dated 08/03/2015, Sunday Standard dated 10/05/2015 and The Sunday Nation dated 28/06/2015. CWSK also made follow up with the area chief of Matuu Sub County (where the child was found abandoned) and Matuu Sub County Hospital where the child was placed for treatment. They claimed that no one had come over to claim the child.
10. Baby L. was placed with the applicant on 30/1/2016 on foster care basis pending adoption and the child has remained to be under her care and protection till date.
11. The Child Welfare Society of Kenya Officer through the social worker, M.N.O drafted a report dated 17th April 2024 and found that the applicant had bonded well with the child and was suitable in all aspects to be an adoptive mother, and recommended her for the adoption order sought
12. The applicant appeared before me on 3rd July 2024 and expressed her desire to adopt the child and committed to take care of her needs.
13. The guardian Ad Litem also appeared to me on the same date and in her testimony recommended the applicant for the appointment.
14. The minor was in good spirits and I observed that she had bonded well with the guardian ad litem and the applicant to a point where she was used to calling the legal guardian (mom).
15. From the foregoing, the following issues are therefore to be determined;
 - i. Whether the applicant is fit to adopt the minor
 - ii. Whether adoption is in the best interests of the child.

Analysis And Determination

16. It is important to first state the law as it is and whether the applicant has met the legal requirements for adoption of the child.
17. The relevant provisions of the law on adoption in Kenya are to be found in Part XIV of the [Children's Act](#) 2022.
18. Section 186 provides for category of persons in favor of whom an adoption order may be made as follows;



1. The court may make an adoption order application by- (a) a sole applicant; or (b) two spouses jointly
2. The court shall not make an adoption order in any case unless- (a) the applicant has attained the age of twenty five years but is not above the age of sixty five years ; and (b) the applicant, or both 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 to the child.
4. The court shall not make an adoption order in favor of the following persons unless the court is satisfied on reasons to be stated on the record that there are special circumstances that warrant the making of the adoption order an applicant or joint applicants who has, or both have, attained the age of sixty-five years.
5. The court shall not make an adoption order in favor of an applicant or joint applicants if the applicant or joint applicants, or any of them-
 - a. Is of unsound mind within the meaning of the *Mental Health Act*(cap 248)
 - b. Is incapable of exercising proper care and guardianship of a child;
 - c. Has been convicted by a court of competent jurisdiction for any of the offences specified in the third schedule or similar offences;
 - d. In the case of joint applicants, the applicants are not married to each other;
 - e. Is a sole male applicant except where the applicant is a biological relative of the child; or
 - f. Is a foreign applicant except where the applicant is a biological relative of the child.
6. Notwithstanding anything contained in this section the court may at its own discretion decline to make an adoption order in favor of any person or persons if the court is of the view that it is not in the best interest of the child to make the order.
19. At the time of making the application, the Applicant has met the criteria under section 186(2) of the *Act*.
20. In Law, any matter concerning a child, in the best interests of the child are paramount. Article 53(2) of the *Constitution of Kenya* 2010 provides for the guiding principle in this question as follows;

‘A child’s best interests are of paramount importance in any matter concerning the child.’
21. This principle also finds expression under Section 8 of The *Children’s Act*.
22. In view of all the above, this court is satisfied that the applicant has fulfilled all requirements and is able to take care of the child.
23. The home visits reports established that the applicant has the financial and emotional capability to provide for the upkeep and education of the child. In the period that the applicant has had custody with the child, the child has bonded well with her and it would be in the best interests of the child to be adopted by the applicant. In *re Baby CK (child)* [2021] eKLR the court expressed the view that;

“...it is in the best interests of the child to be adopted by the applicant. The applicant has demonstrated her capability to provide a conducive home and family environment where the child will grow and develop. She will assume all parental rights and obligations of the



biological parents of the child once adopted, and shall treat her as if she were born to her. She has been made aware that once the adoption order is made, it shall be final and binding during the lifetime of the child. The child shall have the right to inherit her property. The applicant shall not be able to give up the child owing to subsequent unforeseen behavior or other changes in the child...”

24. In *Weller & others vs Associated Newspaper Limited* [2015] ALL ER (D) 194:

“There best interests may be held in a variety of different contexts for example the balancing exercise must always be undertaken in the child’s cases as in adult cases although a child is not a trump card in the balancing exercise, the primacy of the best interests of a child means that, where a child interests would be adverse by affected, they must give considerable weight.”

25. *Children’s Act* the Geneva Declaration on the rights of a child [1924] in Article 2 provides that:

“That the child shall enjoy special protection, shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of the laws for this purpose the best interests of the child shall be the parent considerations.”

26. The best interests of The Child’s right is a principle derived from Article 3 of the *United Nations Convention on the rights of a child* that:

“In all actions concerning children whether undertaken by public or private social welfare institutions, courts of law administrative authorities of legislative bodies, the best interest of the child shall be the primary consideration.”

27. In *Re B(Baby)*[2018]eKLR the court held that:

“The purpose of Kenya’s Constitution and The *Children’s Act* is to protect and promote the welfare of Children by providing them with stable family units. The fundamental concern therefore in any adoption cause provision is of the best interest of that child... It is that family unit that the constitution contemplates under article 45 which also has to take responsibilities in fulfilling the obligations enjoined in article 53 of the same constitution.”

28. For the going reasons, I allow the application for adoption in the following terms;

- a. The applicant be and is hereby authorized to adopt the child and henceforth to be called Princess T.W.
- b. The child is presumed to be a Kenyan citizen by birth, born on 17th February 2015.
- c. That the Registrar General do make the appropriate entries in the adopted children’s register with respect to the child and a subsequent Birth Certificate be issued by the Registrar of Births and Deaths.
- d. A.W. be and is hereby appointed as the legal guardian of the child.
- e. M.W.K., the guardian ad litem is hereby discharged.

DATED, SIGNED & DELIVERED IN NAKURU ON THIS 12TH DAY OF JULY, 2024.

H.M. NYAGA



JUDGE

In the presence of;

C/A Jennifer

Applicant present

