



In re JM alias JN alias NJ alias Unknown Male Child (Child) (Adoption Cause E005 of 2023) [2024] KEHC 9404 (KLR) (1 August 2024) (Judgment)

Neutral citation: [2024] KEHC 9404 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
ADOPTION CAUSE E005 OF 2023
MA ODERO, J
AUGUST 1, 2024**

IN THE MATTER OF

JWK APPLICANT

JUDGMENT

1. Before Court is the Amended Originating Summons dated 11th June, 2024 by which the Applicant JWK seeks the following orders:-

- “1. Spent
2. Spent
3. That the Applicant be authorized to adopt babyJ male child alias babyJN alias NJ alias unknown male child, to be known as DBK.
4. That the child be presumed a Kenyan Citizen by birth.
5. That the child’s date of birth be 20th December, 2019 and the place of birth be Baba Dogo Nairobi.
6. That the Registrar General be directed to enter the adoption in the Adopted Children Register.
7. That the Director Immigration be authorized to issue the child with a Kenya passport.
8. That MN and BNN be appointed the legal guardians of the child in event of the death or incapacity of the Applicants before the child is of age or independent.
9. That, the court be pleased to make any further orders it deems necessary.”



2. The Summons was supported by the Affidavit of even date sworn by the Applicant. The matter proceeded by way of vive voce hearing on the virtual platform.
3. The Applicant JWK is a single woman who has never been married and who has no biological children of her own. The Applicant however does have a daughter whom she adopted in the year 2018.
4. The applicant now seeks to adopt another child in order to expand her family. The Applicant confirmed that she understands the legal implications of an adoption order and undertakes to accord to the subject child all rights due to a biological child including the right to inherit.

Analysis And Determination

4. I have considered this application for adoption, the evidence adduced in support thereof as well as the various reports filed in court.
4. The prerequisites for adoption are set out in Section 184 (1) (a) and (b) of the Childrens Act 2022 as follows:-
 - “(1) A person shall not commence any arrangement for the adoption of a child unless:-
 - (a) The council, in accordance with the rules, has declared the child free for adoption.
 - (b) The child has attained the age of six weeks.”
7. The subject child is a boy child who is believed to have been born on or about 20th December, 2019. The child is therefore now aged four and a half (4½) years old and is above the six (6) week age limit provided for by law.
8. Buckner Kenya Adoption Services, which is a registered adoption agency have annexed to their report a copy of their certificate serial No. 0658 dated 9th November, 2022 declaring the child Free For Adoption. Therefore I am satisfied that the legal prerequisites for adoption have been met.
9. The duty of this court is to analyze the evidence on record to determine whether the Applicant is a suitable adoptive parent. The Applicant is a Kenyan Citizen who resides in Nyeri County in the Republic of Kenya. A copy of her National Identity Card is annexed to this application (Annexure JWK ‘7’).
10. The Applicant is a single woman who has never been married and has no biological children of her own. However as stated earlier the Applicant has a daughter whom she adopted in the year 2018. A copy of the child’s Adoption Order dated 14th December 2018 as well as her Birth and Adoption Certificates are annexed to the Summons (Annexures JWK – 8’)
11. The Applicant is in stable employment as Tax and Financial Consultant With Oiko Credit. She has annexed copies of her financial documents (Annexure ‘JWK - ‘9’) as proof that she has the financial means to provide for the child.
12. The Applicant is a Christian and intends to raise the child in the Christian faith. She has annexed her medical records as proof of the fact that she is physically and mentally stable (Annexure ‘JWK 10’)
13. The Applicant has also annexed a copy of a clearance certificate issued to her by the Directorate of Criminal Investigations (Annexure ‘JWK11’) confirming that she has no criminal record.
14. The Applicant told the court that her family are aware of and support her intention to adopt the child. She has appointed legal Guardians in the event she is unable or unavailable to care for the child. The proposed Legal Guardians Michael Ndegwa and Beatrice Nduta Ndegwa have both signed the letter of



- consent dated 22nd November 2020 confirming their willingness to be appointed as the legal guardians for the child. (Annexure 'JWK 13')
15. Based on the material presented before this court, I am satisfied that the Applicant is a suitable adoptive parent.
 16. The subject child is believed to have been born on 20th December, 2019. The child was found abandoned at the age of approximately two (2) weeks old in Mugure Estate, Baba Dogo area of Nairobi County. A Good Samaritan rescued the baby and reported the abandonment at Ruaraka Police Station vide OB Number 46 of 30th December, 2019.
 17. The child was then admitted at Happy life Childrens Home.
Thereafter on 5th February, 2020 the Nairobi Childrens Court committed the child to the same home as a child in need of care and protection.
 18. On 14th December, 2022 the child was released into the custody of the Applicant under a Foster Care Agreement.
 19. 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.”
 20. The subject child was found abandoned at the age of two (2) weeks within Nairobi County in the Republic of Kenya. Efforts by police to trace the biological mother and/or relatives of the child have borne no fruit. To date no person has come forward to claim the child. A final police letter dated 30th December 2019 (Annexure JWK 1) confirms this fact. I therefore declare the child to be a citizen of Kenya by birth.
 21. Given the fact of his abandonment there exists no known person from whom consent for this adoption can be sought and/or obtained. In the circumstances, I do waive the requirement for consent in line with Section 187 (1) (a) Children Act 2022.
 22. In deciding upon any matter involving a child, courts are obliged to give priority to the ‘best interests’ of the said child. Section 8 (1) of the Children Act 2022 provides that:-
 - “(8). (1) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies –
 - (a) The best interests of the child shall be the priority consideration” [Own emphasis]
 23. This is a child who was abandoned barely two weeks after his birth. He faced an uncertain future living in childrens Homes/Institutions. This adoption provides the child with the opportunity to be raised in a stable and loving home/environment.
 24. The child has lived with the Applicant for close to two (2) years. He has undoubtedly bonded with the Applicant and her daughter. This the only family the child knows. I was able to see the child online. He was a healthy cheerful little boy who confidently answered all questions put to him. The child was obviously at ease sitting next to the Applicant.
 25. A Home visit was conducted by the Children’s Department. The Applicant lives in a spacious home in Garden Estate in Nyeri County. The home is within its own compound with a security fence around it



and has adequate space and facilities to raise an active growing young boy. The Applicant has employed a Nanny to assist in caring for the child.

26. I have considered the reports prepared by the Adoption Agency, the Guardian Ad Litem and the Director Childrens Services. All three Reports were positive and all recommend the adoption.
27. Finally I find that this adoption does serve the best interest of the subject child. Accordingly I allow this application and make the following orders:-
 1. The Applicant JWK is authorized to adopt the child know as Baby Jamhuri alias Baby Jamhuri Nathan alias Nathan Jamhuri alias Unknown male child.
 2. Upon adoption the child will be known as DBK.
 3. The child is declared to be a Kenyan citizen by birth and is entitled to all the rights and privileges pursuant thereto.
 4. MNG and BNN are appointed as the legal Guardians of the child.
 5. The Registrar – General is directed to make relevant entry in the Adopted Childrens Register.
 6. No orders on costs.

DATED IN NYERI THIS 1ST DAY OF AUGUST, 2024.

MAUREEN A. ODERO

JUDGE

