



**In re Adoption of Baby M (Minor) (Adoption Cause E055 of 2024)
[2024] KEHC 10773 (KLR) (Family) (19 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 10773 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E055 OF 2024
H NAMISI, J
SEPTEMBER 19, 2024**

IN THE MATTER OF

JWM APPLICANT

JUDGMENT

1. The Applicant filed an Originating Summons dated 13 February 2024, Statement in Support of the Application for an Adoption Order and Affidavit in Support of the Application, seeking:
 - i. That the Applicant be authorised to adopt Baby M, a minor who is to be known as M.N.M and the Registrar General be directed to enter this adoption into the Register of Adoptions;
 - ii. That G.G.N and J.W.G be appointed as legal guardians of the child;
 - iii. That the child be presumed to have been born in Kenya
2. The matter was canvassed by way of viva voce evidence on the virtual platform on 25th July 2024.

The Child

3. It is estimated that the child (male) was born on 18 November 2019. The child was found abandoned on 21 November 2019 in the Kamukunji area of Nairobi County and the matter was reported to the Kamukunji Police Station vide OB No. XXXX11/2019. The child was committed to the Mogra Children’s Home on 16th July 2021 by the Nairobi Children’s Court. The child was then placed with the Applicant on 28 January 2023.
4. The child was declared free for adoption on 26 January 2022 by the KKPI Adoption Society, a registered Adoption Agency, vide the annexed Certificate serial number 0634. I am, therefore, satisfied that this legal pre-requisite for an adoption has been met.



The Applicant

5. The Applicant is Kenyan citizen, aged 51 years. She resides in Garden Estate, Nairobi and is a self employed in the food industry. Although she has no biological children, the Applicant has one adopted daughter who is 3 years old.
6. The Applicant confirmed that she is financially capable of providing for the child. She confirmed that the larger family has accepted the child, who has bonded very well with the Applicant as well as her daughter. They also confirmed that they fully understand the implications of an adoption order.

The Adoption Application

7. I have considered the Summons, the evidence on record as well as the various reports filed in a bid to determine whether the Applicant is a suitable adoptive parent.
8. The Applicant has previously adopted a child, currently aged 3 years. She is a practising Christian and worships at the Covenant Centre Nairobi. She has annexed copies of her bank statements, copy of title deed and copy of registration of business certificate, as proof of her financial stability.
9. The Applicant has also annexed copies of clearance certificate from the Kenya Police Service as proof that she has no criminal record. She has provided Recommendations letters as well in proof of her character and good standing.
10. The Applicant presented G.G. N and J. W.G as proposed legal guardians for the child. The said legal guardians, a married couple, signed a consent dated 13 February 2023 indicating their willingness to step in and care for the child in the event the Applicant is unable to provide for the child. J.W.G is a sister to the Applicant, while G.G.N is her brother-in-law. The proposed legal guardians confirmed that they understood their role and had also explained the same to their children.
11. From the material availed and oral testimonies, I am satisfied that the Applicant is quite suited to be an adoptive parent.

Analysis and Determination

12. Article 14 (4) of *The Constitution* provides as follows:

A child found in Kenya who is, or appears to be, less than 8 years of age, and whose nationality and parents are not known, is presumed to be a citizen by birth.
13. The child was found abandoned within the Republic of Kenya a few days after he was born. I, therefore, declare that the child is a citizen of Kenya by birth.
14. All efforts by the police to trace the child's parents/relatives have borne no fruit. I have seen the letter dated 24 November 2019 from Kamukunji Police Station, Nairobi, in which it is indicated that the child was brought to the Police Station by a good Samaritan, having been abandoned by his mother. From the various reports presented, it would seem that there exists no known person from whom consent for this adoption can be sought and/or obtained. I, therefore, waive this requirement in line with section 185 (4)(b) of the *Children Act*.
15. In deciding any matter involving a child, the court is obligated to give priority to the best interest of the child. Section 8 of the *Children Act* provides:
 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 primary consideration;
 - b. The best interests of the child shall include, but shall not be limited to the considerations set out in the First Schedule;
2. All judicial and administrative institutions, and all persons acting in the name of such institutions, when exercising any powers conferred under this Act or any other written law, shall treat the interests of the child as the first and paramount consideration to the extent that this is consistent with adopting a course of action calculated to:-
- a. Safeguard and promote the rights and welfare of the child;
 - b. Conserve and promote the welfare of the child; and
 - c. Secure for the child such guidance and correction as is necessary for the welfare of the child, and in the public interest.
16. This child who was abandoned soon after birth faced an uncertain future in the children's homes and other similar institutions. This adoption, therefore, allows the child the opportunity to be raised in a stable and loving home environment.
17. I have considered the Reports filed by the Adoption Agency, the Guardian ad Litem, the Director of Children Services, all of which were positive and recommended the adoption. I was able to speak to the child, who was very comfortable with the Applicant. He seemed happy and well cared for. He is aged 4 years and attends school, where he is enrolled in kindergarten.
18. It is, therefore, my view that the adoption does serve the best interests of the child.
19. Accordingly, I allow the Originating Summons and make the following orders:
- i. That the Applicant, J.W.M, is allowed to adopt the child currently identified as Baby M;
 - ii. Upon adoption, the child shall be renamed as M.N.M;
 - iii. The child is declared to be a Kenyan citizen by birth, entitled to all the rights and privileges under *the Constitution* of Kenya and all applicable laws;
 - iv. G.G.N and J.W.G are appointed as Legal Guardians of the child,
 - v. The Guardian *ad Litem* is hereby discharged;
 - vi. That the Registrar-General is directed to make the appropriate entries in the Adopted Children's Register;

DATED AND DELIVERED AT NAIROBI THIS 19 DAY OF SEPTEMBER, 2024

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on a virtual platform in the presence of

.,Ms. Wairimu.....for the Applicant

