



**In re Baby LM (Minor) (Adoption Cause E070 of 2024)  
[2024] KEHC 11257 (KLR) (Family) (19 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 11257 (KLR)

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

**FAMILY**

**ADOPTION CAUSE E070 OF 2024**

**CJ KENDAGOR, J**

**SEPTEMBER 19, 2024**

**IN THE MATTER OF ADOPTION OF BABY LM (MINOR)**

**IN THE MATTER OF**

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

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

**JUDGMENT**

1. Before Court is the Originating Summons dated 20<sup>th</sup> March, 2024 in which the Applicants seek the following orders;
  1. That the Applicants be authorized to adopt Baby LM, a minor who is to be known as YJN and the Registrar General be directed to enter this adoption into the Register of Adoptions.
  2. That RMN be appointed as the Legal Guardian of the child.
  3. That the child be presumed to be born in Kenya.
2. The Originating Summons is supported by the affidavit of the Applicants of even date. The matter was canvassed by way of oral evidence on the online platform.
3. The Applicants are Kenyan citizens by birth residing in Nairobi County. They are husband and wife, and they got married on 28<sup>th</sup> November, 1998, at A.I.C Kakuswi, Makueni, as evidenced by their marriage certificate produced before this court. They have three biological children aged 25, 20, and 9 years old of their own. The 1<sup>st</sup> Applicant is a clerk and a driver, whereas the 2<sup>nd</sup> Applicant is a teacher.
4. They averred that they love children and were driven by the desire to have a brother for their three daughters; hence, they made an application to Buckner Kenya Adoption Services seeking to adopt the child herein.



5. On the online platform in Court, RNK stated that the minor was placed in their custody last year, that he has consulted his extended family, that his children have understood adoption and have accepted the minor, and that he understands the impact of the adoption order. He told the court that he has a passion for taking care of children who have no parents.
6. JNM told the court that she is passionate about children and is ready to adopt the minor. She stated that she understands the adoption order's implications, that the adoption is in the minor's best interest, and that they intend to name the minor YJM.
7. RMN, the Legal Guardian told the court that she is a professional teacher. The applicants are her parents. She stated that she understands the adoption process and knows her role as the legal guardian.
8. DMM was appointed as the guardian ad litem by the court. She produced a report dated 25<sup>th</sup> April, 2024. She told the court that she had visited the applicants at their home on Kangundo Road. She recommended the adoption
9. AM, a Buckner Kenya Adoption Services representative, stated that the applicants were assessed and approved by the committee on 9<sup>th</sup> September, 2022. The child was declared free for adoption and placed in the applicant's custody on 28<sup>th</sup> July, 2023. He filed a Report dated 16<sup>th</sup> April, 2024. They recommended the adoption, which, according to him, is in the best interest of the child.
10. Ms. K, on behalf of the Directorate of Children Services, produced a Report dated 28<sup>th</sup> June, 2024. He stated that he prepared a report, and the Secretary of Children Services recommended that the applicants be allowed to adopt the minor.

#### **Analysis And Determination.**

11. The Preliminary requirements for the making of an Adoption Order are set out in Section 156 (1) of the Children's Act, which provides as follows:-

“ 156(1) No arrangement shall be commenced for the adoption of a child unless the child is at least six (6) weeks old and has been declared free for adoption by a Registered Adoption Society in accordance with the Rules prescribed in that behalf.”
12. The subject child is believed to have been born on 11<sup>th</sup> February, 2022. He is now two and a half years old and is above the six (6) week age limit set by law. Buckner Kenya Adoption Services, which is a Registered Adoption Agency, has filed in Court a Certificate of Declaring A Child Free for Adoption. I am satisfied that all the prerequisites for Adoption have been met.
13. This Court has a duty to analyze the evidence presented to determine whether the Applicants are suitable adoptive parents for the subject child. The Applicants are Kenyan citizens, as evidenced by the copy of their national identity cards that are annexed to the Summons. The Applicants are a couple and have three biological children of their own.
14. RNK stated that he informed his family of his intention to adopt the minor, and they were supportive of his decision. The Applicants further stated that they work and can cater for the minor.
15. The Applicants have annexed copies of Clearance Certificates issued to them by the Kenya Police Service on 26<sup>th</sup> March, 2022 and 24<sup>th</sup> February, 2022 indicating that they do not have a criminal record. They reside with the child in a two-bedroom bungalow at Mowlem, Kangundo Road. The home was found to be conducive to raising the child.



16. I am satisfied that the Applicants have a genuine desire to adopt the child. They are suitable as adoptive parents.
17. The subject child is a male child believed to have been born on 11<sup>th</sup> February, 2022. The child was found abandoned on 14<sup>th</sup> February, 2022 at Day Springs Estate. The abandonment was reported at Dandora Police Station vide OB No. 18/14/02/2022. The child was committed to Imani Children's Home for temporary Care and Protection. After that, on 28<sup>th</sup> July, 2023, the child was released into the custody of the Applicants.
18. Article 14 of *the Constitution* of Kenya, 2010 deals with the question of Citizenship. Article 14 (4) provides as follows: -
- “(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.”
19. The subject child was found abandoned as a newborn baby in Nairobi County. As such, I declare the child to be a citizen of Kenya by birth.
20. The subject child was abandoned by the mother who bore him. All efforts made to trace the biological mother/relatives of the child have been unsuccessful. To date, no person has come forward to claim the child. A police letter dated 10<sup>th</sup> July, 2023 written by the Officer Commanding Station, Dandora, confirms this fact. I hereby declare the minor a Kenyan Citizen by birth.
21. In deciding upon any matter involving a Child, Courts are obliged to give priority to the best interests of the said child. Section 4 (2) of the *Children Act* provides: -
- “(2) In all actions concerning children, whether undertaken by public or private social welfare institutions, Courts of Law administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration.” [own emphasis]
22. The subject child was abandoned at birth. He faced an uncertain future. This Adoption allows the child to be raised in a stable and loving family environment.
23. The subject child has lived with the Applicants since 28<sup>th</sup> July, 2023 – a period of over one year. This is the only family he knows. I do not doubt that the child has bonded with the Applicants.
24. Based on the foregoing I am satisfied that this adoption serves the best interests of the child. As such, I allow this application and make the following orders:
- i. The Applicant, RNK and JNM are authorized to adopt the child known as Baby LM.
  - ii. The Registrar-General is directed to make the relevant entries in the Adopted Children's Register.
  - iii. Upon adoption, the child will be known as YJM.
  - iv. The child is declared to be a Kenyan citizen by birth.
  - v. RMN is hereby appointed as the child's legal guardian.
  - vi. The guardian ad litem is hereby discharged.



25. It is so ordered.

**DATED, DELIVERED and SIGNED at NAIROBI through the Microsoft Teams Online Platform on 19TH SEPTEMBER, 2024.**

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**C. KENDAGOR**

**JUDGE**

In the presence:

Court Assistant: Beryl

Ms. Muhanda Advocate: present

