



In re K alias Abandoned Baby Njomoko alias EM (Minor) (Adoption Cause E001 of 2024) [2024] KEHC 10765 (KLR) (Family) (19 September 2024) (Judgment)

Neutral citation: [2024] KEHC 10765 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E001 OF 2024**

**H NAMISI, J
SEPTEMBER 19, 2024**

IN THE MATTER OF

**SKR 1ST APPLICANT
ECA 2ND APPLICANT**

JUDGMENT

1. Before this Court is the Originating Summons dated 8 January 2024, Statement in Support of the Application for an Adoption Order and Affidavit in Support of the Application, seeking:
 - i. That the Applicants be authorised to adopt Baby E.M a child who is to be known as J.K.K and the Registrar General be directed to enter this adoption into the Register of Adoptions;
 - ii. That E.T and C.W be appointed as the 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 Chil

3. The child (male) was born on 6th May 2022. He is currently 2 years old. The child was found abandoned on 6th May 2022 in [particulars withheld] area of Kiambu county. The matter was reported to the Police vide OB No XXXX05/2022. The child was committed to Kujali Children’s Home by the Children’s Court at Thika on 24th May 2022.
4. The child was declared free for adoption by the Buckner Kenya Adoption Services, a registered Adoption Agency, vide the annexed Certificate serial number XXXX. I am, therefore, satisfied that this legal pre-requisite for an adoption has been met.



The Applicants

5. The Applicants are Kenyan citizens. They are a married couple, having celebrated their marriage customarily in 2013 and formally in 2017. They have one daughter, aged 7 years, who is also adopted.
6. The 1st Applicant, aged 43 years old, is an IT specialist and stated that he is financially capable of providing for the child. The 2nd Applicant is a Banker. They both confirmed that the larger family has accepted the child, who has bonded very well with the Applicants as well as their daughter. They also confirmed that they fully understand the implications of an adoption order.
7. At the hearing, it was noticeable that the child was very comfortable with both Applicants, though he could not speak coherently. He pointed at them when asked about “Mom” and “Dad”.

The Adoption Application

8. I have considered the Summons, the evidence on record as well as the various reports filed.
9. The duty of this Court is to analyse the material before it to determine whether the Applicants are suitable adoptive parents. The Applicants states that they are practising Christians and intend to raise the child in the Christian faith. They are members of St.[particulars withheld] Catholic Church, Kamulu Parish. The Applicants have annexed copies of bank statements, as proof of their financial stability.
10. The Applicants have also annexed copies of clearance certificates from the Kenya Police Service as proof that they have no criminal record. They have provided Recommendations letters as well in proof of their character and good standing.
11. The Applicants presented C.W.G and E.T.K as proposed legal guardians for the child. The said legal guardians, a married couple, signed a consent dated 14th December 2023 indicating their willingness to step in and care for the child in the event the Applicants are unable to provide for the child. The couple has been friends with the Applicants for several years. They have 2 adult children and 2 minors. The proposed legal guardians confirmed that they understood their role and had also explained the same to their children.
12. From the material availed, I am satisfied that the Applicants are suitable adoptive parents.

Analysis and Determination

13. 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 know, is presumes to be a citizen by birth.
14. The child was found abandoned within the Republic of Kenya the same day he was born. I, therefore, declare that the child is a citizen of Kenya by birth.
15. The child was abandoned and all efforts by the police to trace the child’s parents/relatives have borne no fruit. The letter dated 5th June 2023 from Kiandutu Police Station, Thika indicates that no one has shown up to claim rightful ownership of the child and efforts to trace the child’s parents have yielded no positive results. In the circumstances, 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*, Cap 141 of the Laws of Kenya.



16. 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.
17. 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.
18. 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 see the child online. The child has been residing with the Applicants since 12th July 2023. He appeared to be very comfortable with the Applicants.
19. It is, therefore, my view that the adoption does serve the best interests of the child.
20. Accordingly, I allow the Summons and make the following orders:
- i. That the Applicants, S.K,R and E.C.A, are allowed to adopt the child currently identified as Baby K alias Baby N alias Baby E.M;
 - ii. Upon adoption, the child shall be renamed as J.K.K;
 - 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. E.T and C.W 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 SEP 2024

HELENE R. NAMISI

JUDGE

Delivered on a virtual platform in the presence of



,....Ms. Muhanda.....for the Applicant

