



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re JN (Minor) (Adoption Cause E164 of 2023)  
[2024] KEHC 15413 (KLR) (Family) (17 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 15413 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
ADOPTION CAUSE E164 OF 2023  
EKO OGOLA, J  
SEPTEMBER 17, 2024  
IN THE MATTER OF THE CHILDREN'S ACT, 2022  
AND  
IN THE MATTER OF THE ADOPTION OF BABY JN (MINOR)  
AND  
IN THE MATTER OF AN APPLICATION FOR ADOPTION BY MWM AND MM  
JUDGMENT**

1. The Originating Summons before this court is dated 17<sup>th</sup> August 2023 by which the applicants pray for the following orders: -
  - a. That MWM of Kenyan National Identity Card Number xxxxxxxx and MM of Kenyan National Identity Card No. xxxxxxxx be authorized to adopt the child Abandoned Baby Boy alias JN (child) who is a Kenyan citizen, presumably born on the 12<sup>th</sup> day of May 2022.
  - b. That upon adoption the child shall be known as DMM.
  - c. That SMM of Kenyan National Identity Card Number xxxxxxxx and AWK of Kenyan National Identity Card Number xxxxxxxx be appointed as legal guardians of Abandoned Baby Boy alias JN (child).
  - d. That the Registrar General be directed to enter this adoption into the Register of Adoption and a subsequent birth certificate do issue by the Registrar of Births and Deaths.
2. The Originating Summons was supported by the statement of even date sworn jointly by the applicant and an affidavit in support of the application. The matter was canvassed by way of viva voce evidence in court.



3. PW1 was MM, the 2<sup>nd</sup> applicant. PW2 was MWM, the 1<sup>st</sup> applicant. PW1 and PW2 testified that they are married and that they have an adopted child and want to adopt the subject child.
4. PW3 was JNM, the guardian ad litem. PW4 was PN, an officer from the Kenyan Children's Adoption Society. PW5 was NO, an officer from the Directorate of Children's Services. PW6 was SMM, the proposed legal guardian. PW7 was AWK, the second proposed legal guardian. They all testified in support of the application.

### **Determination**

5. I have carefully considered this adoption application, the various affidavits and reports on record as well as the relevant law. I have also considered the evidence adduced in open court.
6. The preliminary requirements for the making of an Adoption Order are set out in Section 184(1) of the *Children's Act* 2022 which provides as follows:  

184 (1) A person shall not commence any arrangement for the adoption of a child for the adoption of a child unless the council, in accordance with the rules, has declared the child free for adoption and the child has attained the age of six (6) weeks old.”
7. The child is presumed to have been born on 12<sup>th</sup> May 2022 at Kibera. On 18<sup>th</sup> May 2022, the child was found abandoned by a good Samaritan within Kibera 42 area. The matter was reported to Ayany Police Pose under OB No. 11/18/05/2022. The child was then placed in New Life Home Trust. On 15<sup>th</sup> July 2022, the child was committed to the said home under P&C No. E.345 of 2022. A letter from the police dated 10<sup>th</sup> January 2023 stated that no one had claimed the child. The child was declared free for adoption on 19<sup>th</sup> April 2023 by Kenya Children's Home Adoption Society under certificate No. 900.
8. From the foregoing, the legal prerequisites for an adoption order have accordingly been met.
9. The duty of this Court is to analyze the material placed before it and decide as to whether the applicants are suitable adoptive parents. The applicants are Kenyan citizens and are financially stable. Hence, they are in a good position to provide for the child's needs. The applicants were also examined and found to be physically and mentally fit. Furthermore, there are copies of the Certificate of Good Conduct issued by the Kenya Police Service which proves that the applicants have no criminal antecedents. From the foregoing, I am satisfied that the applicants are a suitable adoptive parent.
10. Article 14 of the *Constitution* deals with the issue 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.”
11. In deciding upon any matter involving a child, Courts are obliged to give priority to the best interest of the said child. Section 8 (1)(a) of the *Children Act* 2022 provides:  

“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.”
12. The child has lived with the applicants for over one year. There is no doubt that the child sees the applicants as his parents. The various reports filed in court all recommend the adoption. Therefore, I am satisfied that the adoption will serve the best interests of the child. Accordingly, I allow this adoption application and make the following orders: -



- a. The Applicants are authorized to adopt the child known as Baby JN.
- b. Upon adoption, the child will be known as DMM.
- c. The Registrar General is directed to make appropriate entries in the Adopted Children's Register.
- d. SMM and AWK is appointed as the legal guardian of the child.
- e. The guardian ad litem is hereby discharged.

Orders accordingly

**DATED AND DELIVERED AT NAIROBI THIS 17<sup>TH</sup> DAY OF SEPTEMBER 2024**

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**E.K. OGOLA**

**JUDGE**

In the presence of:

Mr. Hagai for the Applicants

Ms Gisiele M court Assistant

