



REPUBLIC OF KENYA



**In re Baby MN (Adoption Cause E138 of 2024)  
[2024] KEHC 13877 (KLR) (Family) (17 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 13877 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
ADOPTION CAUSE E138 OF 2024  
BK NJOROGE, J  
OCTOBER 17, 2024  
IN THE MATTER OF AN APPLICATION FOR ADOPTION  
BY**

**IN THE MATTER OF  
CNM ..... APPLICANT**

**JUDGMENT**

1. This Judgment is in respect of an Adoption application by the Sole Applicant. It is by way of an Originating Summons dated 2<sup>nd</sup> July, 2024. It is supported by the Statement of the Sole Applicant dated 2<sup>nd</sup> July, 2024 as well as her Affidavit sworn on 2<sup>nd</sup> July, 2024. The Sole Applicant seeks the for the following orders.
  - a. Spent
  - b. That the Applicant, CNM be authorised to adopt MN.
  - c. That upon adoption, the child be known as MWM.
  - d. That RWM be appointed as the legal guardian of the child.
  - e. That the Registrar General be directed to enter this adoption into the Register of Adoptions.
  - f. That the child be presumed to be a Kenyan citizen and be accorded all rights of Immigration that accrue to Kenyan Citizens.
  - g. That the Director of Immigration Services do issue the child MWM a Kenyan passport upon application.



2. The Originating Summon is presented to Court pursuant to Sections 186, 187, 188 of *Children Act* (Act No 29 of 2022) and Section 24 of the Interpretations and General Provisions Act, (Cap 2 of the Laws of Kenya) Section 3A of the *Civil Procedure Act* cap 21 of the Laws of Kenya.
3. The Sole Applicant is a Kenyan Citizen. She is currently a single lady. She has never contracted a marriage and presents this application as a sole Applicant. The Applicant is 50 years old. She is a Businesslady in Nairobi. She sells clothes, fashion and children's entertainment. She professes the Christian faith and attends the Parklands Baptist Church. She intends to raise the child in the Christian faith as well as instil Christian moral values.
4. The Sole Applicant does not have any children of her own.
5. A Guardian *ad litem*'s Report dated 23<sup>rd</sup> July, 2024 has been filed. This is pursuant to Section 188 (2) (b) of the *Children Act* cap 141 of the Laws of Kenya. The Guardian *ad litem* was approved vide an order made on 11<sup>th</sup> July, 2024 before the Court.
6. The Director of Children's Services has also filed a report dated 24<sup>th</sup> July, 2024.
7. The Sole Applicant appeared in Court virtually on 25<sup>th</sup> July, 2024. The Court was able to watch the close bond that she has formed with the Child, the subject matter of these proceedings who is 7 years old. The Court listened to the Sole Applicant's evidence and her motivation to get and raise her own child, by way of adoption. She wishes to raise a family. She also wishes to give a home to a less fortunate child.
8. The Court also heard Jacqueline Wamboi Mwangi a representative of the KKPI Adoption Society, an adoption agency. She confirmed that the adoption meets the statutory process required of an adoption society. The case committee of the adoption society at its sitting held on 30<sup>th</sup> November, 2022 declared the child free for Adoption. A Certificate Declaring a Child Free for Adoption No 897 was issued on 30<sup>th</sup> November, 2022. The Certificate is a mandatory Requirement of the law as per Section 184 (1) (b) of the *Children Act* cap 141 of the Laws of Kenya. The Adoption Society supports the adoption.
9. The Court has noted the Reports filed by the Guardian *ad litem* and the Director of Children Services. They are filed without any reservations to the adoption process.
10. The Sole Applicant has also made provisions for the appointment of the Child's Legal Guardian. This is in the case of unforeseen circumstances or their incapacity. She has proposed RM her sister. The Guardian also appeared before the Court virtually. She confirmed her consent. The proposal for appointment of a Legal Guardian is in line with Section 195 of the *Children Act* cap 141 of the Laws of Kenya. Equally this proposal serves in the best interests of the child.
11. The Court has noted that the child the subject matter of this adoption was estimated born on 14<sup>th</sup> December, 2016. She was found abandoned at Githurai 45 by an unnamed good Samaritan. The Child was taken to Kasarani Police Station and the matter booked vide OB No 38/16/12/2016. She was presumed to be two days old. The Police referred the child to Mogra Rescue Centre vide a letter dated 16<sup>th</sup> December, 2016. The child was formally committed to Mogra Rescue Centre vide Nairobi Srnc Children Court P & C Case No 84 of 2018. The Court has seen the police final letter dated 27<sup>th</sup> January, 2022.
12. The child was found abandoned at a Chief's camp, a place where she would most likely be found by someone. She was eventually found. The police have not been able to trace the parents of the child. The Court therefore deems this as a case of soft abandonment. The consent of the natural parents



as required by Section 187 (1) of the *Children Act* cap 141 of the laws of Kenya is dispensed with, pursuant to Section 186 (8) (a) of the *Children Act* cap 141 of the laws of Kenya.

13. The child remained hosted at Mogra Rescue Centre Angel Centre for Abandoned Children.
14. The Sole Applicant received the child into the care on 5<sup>th</sup> December, 2022. The Court has seen the foster care agreement dated 5<sup>th</sup> December, 2022 between the Sole Applicant and Angel Centre for Abandoned Children.
15. The Sole Applicant does not have any criminal records. She has obtained a Certificate of Good Conduct No PCC-QPTXXXQQ dated 21<sup>st</sup> July, 2022.
16. There is also issue of the child's nationality. The child was found abandoned in Kenya. Her abandonment was within the territory of Kenya.

Article No 14 (4) of the *Constitution* of Kenya states 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.”

17. On the question of where the child was found abandoned, it was within Githurai 45 which is within the territory of Kenya. The the child is deemed a Kenyan Citizen.
18. The Child has a right to Citizenship. The *Constitution* confers the right of Kenya Citizenship, to a child found abandoned within the Kenyan territory.
19. The Court has considered the application before it in its entirety.
20. The Court has also heard all the parties who appeared before it. All the Reports filed and presented support the adoption.
21. The Court finds that it is in the best interests of the child that she gets a stable home where she will be loved, nurtured and allowed to grow to her full potential. In turn she will contribute to the growth of this great Nation as a great citizen of this Country.
22. The Court notes that the Sole Applicant has a strong desire to provide a home to the child. She wishes to settle down and raise the child as her own. The Court appreciates that the Sole Applicant attended Court and expressed her desires to adopt, articulately. That she has chosen this path of adoption is an admirable act on her part. She has a strong connection to her siblings and they should provide her with all the moral support that she needs.
23. The Court notes that the Sole Applicant is aware that if she were to find a life partner for a marriage, the child would be part and parcel of such a relationship.
24. The Court is pleased to grant the Sole Applicant her desire to adopt the child.

### **Determination**

25. The Court grants the prayers sought the Originating Summons dated 2<sup>nd</sup> July, 2024 in the following terms;
  - a. Spent
  - b. That the Applicant, CNM be authorised to adopt MN.



- c. That upon adoption, the child be known as MWM.
- d. That RWM be appointed as the legal guardian of the child.
- e. That the Registrar General be directed to enter this adoption into the Register of Adoptions.
- f. That the child be presumed to be a Kenyan citizen and be accorded all rights of Immigration that accrue to Kenyan Citizens.
- g. That the Director of Immigration Services do issue the child MWM a Kenyan passport upon application.
- h. That the Registrar of Births and Deaths and or the relevant Government Department do issue the Sole Applicant with a post adoption birth certificate.
- i. That the child's date and place of birth be declared to be 14<sup>th</sup> December, 2016 at Nairobi.
- j. That the Guardian *ad litem* be discharged.

26. It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 17<sup>TH</sup> OF OCTOBER, 2024.**

**NJOROGE BENJAMIN. K**

**JUDGE**

**In the presence of:**

.....for the Applicant

Court Assistant: .....

