



**In re WN (Infant) (Adoption Cause .E052 of 2022)  
[2023] KEHC 2207 (KLR) (Family) (10 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 2207 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
ADOPTION CAUSE .E052 OF 2022  
MA ODERO, J  
FEBRUARY 10, 2023**

**IN THE MATTER OF**

**TWM ..... APPLICANT**

**JUDGMENT**

1. Before this court is the Re-Amended Originating Summons dated 23<sup>rd</sup> January 2022 by which the following Applicant seeks the following orders:-
  - “1. Spent
  2. Spent
  3. That MWK resident of Nairobi in the Republic of Kenya be appointed guardian ad litem in this case.
  4. That AM and JM residents of Nairobi in the Republic of Kenya be appointed legal guardians of Baby WN (infant) in this case.
  5. That this Honourable court declares Baby WN a Kenyan Citizen.
  6. That the applicant TWM be authorized to adopt Baby WN (infant).
  7. That the Applicant TWM be declared the guardian of baby WN.
  8. That the names of the said infant be changed from Baby WN to EZ upon issuance of the orders.
  9. That the Registrar General makes appropriate entries in the Adopted Children Register.



10. That the Director of Children Department makes an assessment and prepares a report on the Applicants.
  11. That Baby WN be issued with birth certificate in the name of EZ and date of birth being November 5, 2016.”
2. The Application was supported by the statement dated April 20, 2022 sworn by the Applicant, and was canvassed by way of vive voce evidence on the virtual platform.
  3. The Applicant TWM is a widow who has no biological children of her own. She told the court that she wished to adopt the subject child in order to complete her family and out of her desire to provide a needy child with a home. The applicant confirmed that she understood the legal implications of an adoption order. She undertook to provide the subject child with all the rights due to a biological child. The applicant stated that her extended family are supportive of her intention to adopt the child.

### **Analysis and Determination**

4. The prerequisites which must be met before an adoption order can be made are set out in section 184 (1) (a) and (b) of the Children’s Act 2022 which provides as follows:-
  - “(1) A person shall not commence any arrangements for the adoption of a child unless—
    - (a) the Council, in accordance with the rules, has declared the child free for adoption; and
    - (b) the child has attained the age of six weeks.”
5. The subject child was born at the Machakos Level 5 Hospital on 5<sup>th</sup> November, 2016. The child is therefore now aged Six (6) years old and is well above the Six (6) week age limit provided for in the Law.
6. Child Welfare Society of Kenya which is a registered Adoption Agency have annexed to their Report dated February 7, 2022 a copy of their Certificate Serial No. 0982 dated 7<sup>th</sup> February, 2018 declaring the child Free For Adoption. I am satisfied that all the legal requirements for an adoption order have been met.
7. The duty of this Court is to examine the evidence on record to determine whether the Applicant is a suitable adoptive parent.
8. The Applicant is a Kenyan citizen as evidenced by the copy of her national identity Card which is annexed to the summons. The Applicant told the Court that she got married to the late MMM ON 22<sup>nd</sup> November 1994 who unfortunately passed away on 11<sup>th</sup> November, 2014. A copy of their marriage certificate Serial Number 8XXXXX as well as the Death Certificate of her late husband Serial Number 02XXXXX are attached to the summons.
9. The Applicant stated that she and her late husband bore one child together, a daughter who unfortunately passed away in infancy. She now wished to adopt a child in order to complete her family.
10. The Applicant is an Accountant and is employed by Hazina SACCO in their Finance Department. She has annexed to the summons copies of her payslips as well as a letter dated 13<sup>th</sup> April 2022 written by the Chief Executive Officer of Hazina SACCO confirming her employment. The Applicant earns sufficient income to provide for the for the needs of the Child.



11. The applicant is a Christian and a Pastor at the New Hope Church in Tena Estate here she worships. She intends to raise the child in the Christian Faith. The Applicant was examined by a doctor and was found to be in good health.
12. The Applicant has annexed to the summons a copy of the Clearance Certificate issued to her by the Directorate of Criminal Investigations proving that she does not have a criminal record. She has appointed as legal guardians AM and JM. The said legal guardians have both signed a consent dated 23<sup>rd</sup> January 2023. I am satisfied from the above that the Applicant is a suitable adoptive parent.
13. The subject child was born on 5<sup>th</sup> November 2016 at the Machakos Level Five Hospital. The child's biological mother abandoned her at the hospital the following day. The abandonment was reported at Machakos Police Station vide OB Number XXXX of 25<sup>th</sup> November 2016. A letter dated 14<sup>th</sup> November, 2016 written by the Medical Superintendent of Machakos Level Five Hospital details the circumstances surrounding the birth and abandonment of the baby. The child was then taken to CWSK for care and protection. On 27<sup>th</sup> February, 2018 the child was released into the custody of the Applicant under a Foster Care Agreement.
14. Article 14 (4) of *the Constitution* of Kenya 2010 provides that:-

“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 of Kenya.”
15. The subject child was abandoned a day after her birth at Machakos Hospital within the Republic of Kenya. As such I find that she is a Kenyan citizen by birth.
16. From the date of her abandonment no person has come forward to claim the subject child. Police efforts to trace the child's biological mother have borne no fruits. A final police letter dated 5<sup>th</sup> September 2017 is annexed to the summons. The Adoption Agency also made efforts to trace the child's mother/relatives. Adverts were placed in the Daily Nation of 5<sup>th</sup> November 2017, but nobody came forward to claim the child.
17. Given the facts of her abandonment there exists no known person from whom consent for this adoption can be sought and/or obtained. In the circumstances for I waive the requirements for consent in line with Section 187(1) of the Children's Act 2022.
18. In deciding upon any matter involving a child, courts are obliged to give priority to the best interests of the child. Section 8 (1) of the *Children Act* 2022 provides:-

“(8). (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;” (own emphasis)
19. This is a child who was abandoned a day after her birth. The child faced an uncertain future living in Children's Homes and other similar institutions. This adoption allows the child the opportunity to be raised in a loving and stable home environment.
20. The child has lived with the Applicant since February 2018, a period of four (4) years. The child has undoubtedly bonded with the Applicant whom she views as her mother. This is the only parent the child has known. I was able to see the child online. She was a healthy happy young girl and was smiling broadly at the camera.



21. A home visit was conducted on 6<sup>th</sup> July 2022 by the Childrens Officer. The Applicant lives in a two bed-roomed house in Tena Estate. The home was found to be in a secure environment with ample rooms for the child to play with other children in the estate. The childrens officer observed that there existed a close bond between the child and the Applicant.
22. I have perused the report prepared by the Adoption Agency, the Guardian ad litem and the Director Children Services. All these reports were positive and all recommended the adoption.
23. In conclusion I am satisfied that this adoption does serve the interests of the subject child and accordingly this Court makes the following order:-
  1. The Applicant TWM is hereby authorized to adopt the child known as Baby WN.
  2. Upon adoption the child shall be known as EZ.
  3. The Child is declared to be a Kenyan citizen by birth and is entitled to all the rights and privileges thereto.
  4. AM and JM are appointed as the legal guardians of the child.
  5. The Registrar General is directed to make the relevant entry in the Adopted Children Register.

**DATED IN NAIROBI THIS 10<sup>TH</sup> DAY OF FEBRUARY, 2023.**

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**MAUREEN A. ODERO**

**JUDGE**

