



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Baby JMM (Adoption Cause E049 of 2022)  
[2023] KEHC 701 (KLR) (Family) (3 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 701 (KLR)

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

**FAMILY**

**ADOPTION CAUSE E049 OF 2022**

**MA ODERO, J**

**FEBRUARY 3, 2023**

**IN THE MATTER OF AN APPLICATION FOR AN  
ADOPTION OF BABY JMM AKA**

**JXM**

**IN THE MATTER OF**

**IBM ..... APPLICANT**

**JUDGMENT**

1. Before this court is amended originating summons dated April 11, 2022 by which the applicant seeks the following orders:-
  1. That the applicant be and is hereby authorized to adopt the child currently known as JMM.
  2. That if the adoption order is granted the said child is thereafter known as JXM.
  3. That the child's date of birth be declared to be October 8, 2018 and his place of birth to be declared to be in Kakamega County, Kenya.
  4. That the child to be considered as a Kenyan citizen.
  5. That the consent of the biological parents of the child be and is hereby dispensed with since it is a mother offer.
  6. That JKO and WNM may be appointed the legal guardian of the child in the event of death of the applicants or incapacity of the applicants, rendering them unavailable or incapable of taking care of the child.
  7. That the Registrar General be directed to make the appropriate entries in the adopted children's register.



2. The application was supported by the statement of even date sworn by the Applicant. The matter was canvassed by way of *viva voce* evidence on the virtual platform.
3. The applicant IBM told the court that she is a single woman who has never been married and has no biological child of her own. The applicant now seeks to adopt the subject child who is a boy child aged four (4) years.
4. The applicant told the court that her family support her intention to adopt and have already accepted the child as one of their own. She confirmed that she understands the legal implications of an adoption order.

### **Analysis and Determination**

5. I have carefully considered this application for adoption, the evidence adduced in support thereof as well as the various reports in court. 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](#) 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.”
6. The subject child was born on October 8, 2018. As such, the child is now aged four (4) years old and is above the six (6) weeks age limit provided for in the law.
7. KKPI Adoption Society which is a registered adoption agency, have annexed to their report a certificate dated December 9, 2020 declaring the child free for adoption. I therefore find that all the legal prerequisites for an adoption order have been met.
8. The duty of this court is to analyze the evidence on record to determine whether the applicant is a suitable adoptive parent.
9. The applicant is a Kenyan citizen as evidenced by copy of her National Identity card, which is annexed at page 22 of the summons. The applicant is a single lady and told the court that she has never been married. The applicant has not been able to bear a child of her own due to medical complications. Hence her desire to adopt a child to call her own.
10. The applicant is a teacher employed on permanent basis by the Teachers Service Commission. She has annexed to the summons copies of her payslips (page 27-29). The applicant has also annexed copies of her bank statements in respect of her account held at Co-operative Bank Kisii Branch (Pages 30-31). I am satisfied that the applicant is financially stable and is well able to provide for the needs of the child.
11. The applicant who is a committed Catholic Christian intends to raise the child in the Christian faith. Annexed to the summons is a letter of recommendation dated October 18, 2019 written by Rev Father Joseph Otomu (page 26).
12. The applicant was examined by a doctor and was found to be both mentally and physically fit.
13. The applicant has annexed to the summons at (page 25) a clearance certificate issued to her by the Directorate of Criminal Investigations confirming that she has no criminal record.



14. The applicant has appointed her brother WNM and his wife JKO as the legal guardians for the child. The said legal guardians have signed a consent dated March 29, 2022. All in all I am satisfied that the applicant is a suitable adoptive parent.
15. The subject child was born on October 18, 2018. The child was found abandoned at the age of one (1) year old near the Chief Camp in the Shirere area of Kakamega County on October 6, 2018. The matter was reported at Kakamega Police Station vide OB Number 49 of October 6, 2018. The baby was then taken to Kakamega hospital for treatment and observation. He was then taken to PEFA Childrens Home for care and protection. Thereafter on December 23, 2019 the child was released into the custody of the Applicant under the Foster Care Agreement.
16. 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”
17. The subject child was found abandoned in Kakamega County within the Republic of Kenya aged only one (1) year old. Therefore the child is presumed to be a Kenyan citizen by birth.
18. Efforts by police to trace the biological mother and/or parents of the child have not been successful. The final police letter dated September 30, 2021 is proof of this fact. To date no person has come forward to claim the child.
19. Given the fact of his abandonment I find that there exists no person from whom consent for this adoption can be sought and/or obtained. In the circumstances, I waive the requirement for consent in line with Section 187(1) of the *Children's Act 2022*.
20. In deciding upon any matter involving a child, courts are obliged to give priority to the best interests of the said child. Section 8 (1) of the *Children Act 2022* provides:-

“(8). In all actions concerning children, whether undertaken by public or  
(1) 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)
21. The subject child was abandoned at the age of one (1) year. His biological mother obviously was either unwilling or unable to care for him. The child faced an uncertain future living in Childrens Homes and such other similar institutions. This adoption allows the child the opportunity to be raised in a loving and stable home environment.
22. I am mindful of the provisions of the old *Children Act 2001*. Section 155(2) prohibited the adoption of a male child by a female applicant save for in exceptional circumstances. However, the new *Children Act* does not bear such a prohibition.
23. Section 186 (4) of the new Act merely prohibits the adoption of a child by a sole male applicant. The 2022 Act is silent regarding the adoption by a sole female applicant of a male child. Thus, I find that this adoption is properly sanctioned by law.
24. I note that the child has lived with the Applicant in her home since December 2019 a period of almost three (3) years. Undoubtedly, the child has bonded with the Applicant and views her as his mother. This is the only parent the child knows.



25. I was able to see the child online. He was a cheerful, healthy young boy who was obviously very comfortable in the company of the Applicant.
26. A home visit was conducted by the children officer. The applicant having relocated to Kisii County where she works, the visit was conducted by the Children Officer in Kisii who filed a report dated August 30, 2022.
27. The applicant resides in her own home in [particulars withheld] Sub County of Kisii County. The home is a three bedroomed bungalow in its own compound. The applicant lives in the home with the child, her eight (8) year old niece and a nanny. The applicant has a kitchen garden and rears chickens in her compound. The home was found to be spacious and well secured. The environment was found to be suitable for raising a child.
28. I have perused the reports of Adoption Agency, the Guardian *Ad Litem* and the Director Children Services. All three reports are positive and recommend the adoption.
29. In conclusion, I find that this adoption will serve the best interests of the child. Accordingly, I allow this application and make the following orders:-
  - 1) The applicant IBM is authorized to adopt the child known as JMM.
  - 2) Upon adoption, the child shall be known as JXM
  - 3) The child is presumed to be a Kenyan Citizen by birth and entitled to all the rights and privileges thereto.
  - 4) The Registrar General is directed to make relevant entry in the adopted children's register.
  - 5) JKO and WNM are appointed as legal guardians for the child.

**DATED IN NAIROBI THIS 3<sup>RD</sup> DAY OF FEBRUARY 2023.**

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**MAUREEN A. ODERO**

**JUDGE**

