



REPUBLIC OF KENYA



KENYA LAW
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**In re JB (Baby) (Adoption Cause E053 of 2022)
[2023] KEHC 573 (KLR) (Family) (3 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 573 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E053 OF 2022
MA ODERO, J
FEBRUARY 3, 2023**

IN THE MATTER OF

AMM 1ST APPLICANT

PKM 2ND APPLICANT

JUDGMENT

1. Before this court is the originating summons dated June 27, 2022 by which the applicants seek the following orders:-
 - ' 1. Spent
 2. Spent
 3. That the consent of the biological mother be dispensed with.
 4. That the applicants be authorized to adopt abandoned Baby aka JB as aka BJ.
 5. That upon adoption the child be known as JBM.
 6. That a presumption order do issue that the child is a citizen of Kenya.
 7. That the registrar general make an entry in the adopted children register of this adoption.
 8. That the costs of this application be costs in the cause.'
2. The application was supported by the statement of even date sworn by the applicants. The matter was canvassed by way of viva voce evidence on the virtual platform.



3. The applicants are a couple who got married to each other in the year 2010. The couple bore one child together a daughter who unfortunately passed away when she was aged thirteen (13) years old. Thereafter they had no other child.
4. The applicants now seek to adopt the subject child in order to complete their family. The applicants both confirm that they fully understand the legal implications of an adoption order and undertake to accord to the subject child all the rights due to a biological child including the right to inherit.

Analysis and determination

5. I have considered this application, the reports filed in court as well as all the evidence adduced in support thereto. The prerequisites for adoption are set out in section 184 (1) of the [Children Act](#) 2022 which provides –

' 184(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.
 - b. the child has attained the age of six weeks.'
6. The subject child is believed to have been born on August 23, 2015. He is now aged 7½ years old and is above the six (6) week age limited provided for in the law.
 7. Child Welfare Society of Kenya which is a registered adoption agency have annexed to their report dated December 6, 2021 the original copy of their certificate Serial No xxxx dated April 21, 2017 declaring the subject child free for adoption. Accordingly, I 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 applicants are suitable adoptive parents.
 9. The applicants are both Kenyan citizens as evidenced by the annexed copies of their national identity cards, (annexture AMPK-‘1’). The couple solemnized their union on November 12, 2010 at the registrar’s office in Nairobi. A copy of their marriage certificate serial No xxxx is annexed to the summons (annexture ‘AMPK-3’).
 10. The couple bore a daughter together but the child unfortunately passed away at the age of thirteen (13) years. The couple now wish to adopt a child in order to fulfil their desire to have a child.
 11. The applicants together run an M-pesa business in xxxx Estate. They also own a five storeyed building in xxxx Estate from which they derive rental income. Additionally the couple owns land in Kisii County and in Nakuru County. I am satisfied that the applicants are financially stable and are able to provide for the child.
 12. The applicants are both committed Christians and intend to raise the child in the Christian faith. Both were examined and found to be mentally and physically fit. The applicants have annexed to the summons copies of the clearance certificate issued by the Directorate of Criminal Investigations proving that they have no criminal record (annexture ‘AMPK-‘2’).
 13. The applicants told the court that their extended family are aware of and support their intention to adopt the subject child. They have appointed their relatives HMA and JOK the legal guardians for the child. The proposed legal guardians have signed an affidavit of consent dated January 26, 2023 indicating their willingness to act as the legal guardian for the child. All in all I am satisfied that the applicant is a suitable adoptive parents.



14. The subject child was abandoned at the age of three (3) months behind the [particulars withheld] Church in Kisii on August 23, 2015. A good samaritan rescued the child and reported the matter at Kisii Police Station vide OB No xx of August 23, 2015. The baby was rushed to Kisii Teaching and Referral Hospital for medical attention.
15. On November 4, 2015 the Kisii Childrens Court committed the child to XXXXXX Centre for care and protection. Thereafter on April 26, 2017 the child was released to the custody of the applicant under a 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 abandoned at the age of three (3) months in Kisii County in the Republic of Kenya. He is therefore presumed to be a citizen of Kenya by birth.
18. Efforts to trace the biological mother/relatives of the child have not been successful. A final police letter dated March 16, 2017 is annexed to the summons (annexure 'AMPK-'14').
19. The CWSK also made efforts to trace the childs relatives by placing adverts in the daily newspapers on four different dates. Copies of said adverts are annexed to the summons (annexure 'AMPK-17'). To date no person has come forward to claim the child.
20. Given the facts of his abandonment there exists no known person from whom consent for this adoption can be sought and/or obtained. I therefore waive the requirement for consent in line with section 187(1) of the Children's Act 2022.
21. 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). (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)
22. This is a child who was abandoned a few months after his birth. He faced an uncertain future living in various childrens homes and other similar institutions. This adoption allows the child the opportunity to be raised in a loving home environment.
23. The child has lived with the applicants since April 2017 a period of over five (5) years. He has undoubtedly bonded with the applicants. This is the only family the child knows. I was able to see the child online. He was a healthy cheerful and articulate boy. I have no doubt that the child is being well cared for.
24. A home visit was conducted on October 4, 2022. The applicants reside in their own home in XXXX Estate. They reside on the ground floor of their block of apartments in a two bedroomed house. The compound was found to be secure with adequate space for the child to play safely. The environment was found to be child friendly.
25. I have carefully perused the reports prepared by the adoption agency, the guardian ad litem and director of children services. All three reports were positive and all recommend the adoption.



26. Finally, I am satisfied that this adoption will serve the best interest of the subject child. I therefore allow this application and make the following orders:-

1. The applicants AAMM And PKM are authorized to adopt the child known as abandoned Baby aka JB aka JJB aka Baby JJB aka JB as aka BJ.
2. Upon adoption the child will be known as JBM.
3. The child is presumed to be a Kenyan citizen by birth and is entitled to all the rights and privileges pursuant thereto.
4. The registrar-general is directed to make the relevant entry in the adopted childrens register.
5. HMA and JOK appointed as the legal guardians for the child.

DATED IN NAIROBI THIS 3RD DAY OF FEBRUARY, 2023

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MAUREEN A ODERO

JUDGE

