



REPUBLIC OF KENYA



**In re MM alias B (Minor) (Adoption Cause E084 of 2022)
[2023] KEHC 3266 (KLR) (Family) (2 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 3266 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E084 OF 2022
EKO OGOLA, J
FEBRUARY 2, 2023**

JUDGMENT

1. Before this court is the originating summons dated June 3, 2022 by which the applicants XAN and WGWM seek the following orders:-
 - a. That LW of P.O. Box 21097-00505 Nairobi, in the Republic of Kenya be appointed Guardian ad litem.
 - b. That the Director Children's Department, Ministry of Labour, Social Security and Service investigate the Applicants' fitness to adopt and file a report.
 - c. That the Applicants be authorized to adopt MM alias baby B to be known as MMLA.
 - d. That the child be presumed a Kenyan Citizen by Birth.
 - e. That the child's date of birth be December 3, 2020 and the place of birth be Kitengela.
 - f. That the Registrar General be directed to enter the adoption in the Adopted Children's Register.
 - g. That the Director of Immigration be authorized to issue the child with a Kenyan passport.
 - h. That the 2nd Applicant's sister WNM be appointed the legal guardian of the child in event of death or incapacity of the Applicants before the child is of age or independent.
 - i. That the court be pleased to make any further orders it deems necessary.



2. The originating summons was supported by the 1st applicant's statement and supporting affidavit of the applicants. It was further canvassed by way of viva voce evidence in open court.
3. PW1 was XAN, the 1st Applicant. He testified that Baby at that moment was 1 year 11 months and they have had time to bond with her. He is a pastor by profession, and he will be able to support the baby.
4. PW2 was WGWM the 2nd Applicant. She testified that she is married to the 1st Applicant and that they do not have any biological children.
5. The guardian ad litem LRW took the stand as PW3. She testified that she visited the Applicants and observed their interaction with the baby. Their home is warm, and the child is well taken care of.
6. PW4 was CO a children's officer. She testified that she visited the Applicants and she recommends the adoption.
7. PW5 was LMA a representative from Change Trust Adoption Society. She testified that the Applicants applied to adopt a child from the Adoption Society. They investigated them and hence recommend the adoption.

Determination

8. I have considered the summons, statements and the various reports filed. The prerequisites for adoption are set out in section 156(1) of the *Children's Act*, 2001 which stipulates as follows: -

“ 159(1) No arrangement shall be commenced for the adoption of a child unless the child is at least six (6) weeks old and has been declared free for adoption by a Registered Adoption Society in accordance with the Rules prescribed in that behalf.”
9. At the time when this adoption process commenced, Baby MM was almost 2 years of age which is above the six (6) week age limit provided for by law. The child was declared free for adoption by Buckner Kenya Adoption Service on November 30, 2021 vide a Certificate, Serial Number XXXX. I am satisfied that the legal prerequisites for an adoption order have been met.
10. The duty of this Court is to analyze the material before it determines whether the Applicants are suitable adoptive parents. The Applicants are Kenyan citizens, as evidenced by copies of their National Identify Card. The 1st Applicant is a Pastor by profession and the 2nd Applicant is an entrepreneur, hence they can sufficiently provide for Baby MM. The Applicants have also annexed copies of their Clearance Certificate issued by the Kenya Police Service as proof that they have no criminal record.
11. The Applicants have appointed WNM to be Baby MM's legal guardian in the event that they would be unable or unavailable to provide for the child. Also, the Applicants' external family is supportive of their intention to adopt Baby MM. From the material availed to this Court I am satisfied that the Applicants are suitable adoptive parents.
12. The subject child was abandoned when she was less than 6 months old. Article 14 of *the Constitution* deals with the question of Citizenship. It stipulates that:

“ (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.”
13. I hereby declare Baby MM, a citizen of Kenya by birth.



14. Furthermore, in deciding upon any matter involving a child, Courts are obliged to prioritise the child's best interest. Section 4(2) of the Children Act 2001 provides as follows:-

“(2) 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”

15. Baby MM was abandoned at a tender age. She was bound to face an uncertain life. This adoption allows her the opportunity to be raised in a stable and loving home environment. A home visit was conducted by the Children's Officer. The Applicants were reported to live in a two-bedroom house with Baby MM. The home was reported to be safe, secure, and conducive for raising a child.

16. There is a birth certificate on record stating that the child was presumably born on December 3, 2020.

17. I find that this adoption does serve the best interests of the child. Accordingly, I do allow the originating summons dated June 3, 2022 and make the following orders:-

- a. The applicants, XAN and WGWM are authorized to adopt the child known as Baby MM.
- b. Upon adoption, the child shall be known as MMLA.
- c. The child is declared to be a Kenyan Citizen by birth and is entitled to all rights and benefits under the Constitution of Kenya and all applicable laws.
- d. The child's date of birth is hereby declared to be December 3, 2020, and her place of birth is hereby declared to be Kitengela.
- e. The guardian ad litem, LW, is hereby discharged.
- f. WNM is hereby appointed as the legal guardian of the child.
- g. The Registrar General is directed to make the relevant entry in the Adopted Children Register.

It is so ordered.

DATED and DELIVERED at NAIROBI this 2nd day of February 2023

E.K. OGOLA

JUDGE

In the presence of:

Mr. Onsongo for the Applicants

Gisiele Muthoni Court Assistant.

