



**In re Baby JW (Adoption Cause E072 of 2022)
[2023] KEHC 3055 (KLR) (Family) (9 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 3055 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E072 OF 2022
EKO OGOLA, J
MARCH 9, 2023
IN THE MATTER OF THE CHILDREN’S ACT, 2001
AND
IN THE MATTER OF ADOPTION OF BABY JOHN WERE**

IN THE MATTER OF

**SNG 1ST APPLICANT
MWN 2ND APPLICANT**

JUDGMENT

1. Before this Court is the Originating Summons dated May 16, 2022 by which the applicants SNG and MWN seek the following orders: -
 1. Spent
 2. That the Director of Children’s Department, Ministry of Labour, Social Security and Services investigate the Applicant’s fitness to adopt and file a report
 3. That the Applicants be authorized to adopt JW to be known as JWN
 4. That the child be presumed to be a Kenyan Citizen by birth
 5. That the child’s date of birth be May 15, 2015 and the place of birth be Kangemi H/Centre
 6. That the Registrar General be directed to enter the adoption in the adopted children register
 7. That the Director Immigration be authorized to issue the child with a Kenyan passport
 8. That EWG be appointed the legal guardian of the child in event of the death or incapacity of the Applicants before the child is of age or independent



9. That the court be pleased to make any further orders it deems necessary
2. The Summons was supported by the statement of even date sworn jointly by the applicants and an Affidavit in support. The matter was canvassed by way of viva voce evidence on the online platform.
3. PW1 was SNG the 1st Applicant herein. He testified that he has lived with the child for five years. That he understands the implication of an Adoption Order and wishes to adopt the child.
4. PW2 was MWN the 2nd Applicant herein. She testified that she has lived with the child for 5 years since 2017 since the child was placed in her care by Kenyans to Kenyans peace Initiative Adoption Society. She testified that she does not have a child of her own. PW2 testified that she understands the implication of an Adoption Order.
5. PW3 was MNK. She testified that she is the court appointed guardian Ad litem for the child. PW3 testified that she visited the Applicants' home and found the child well taken care of. PW3 filed a report on January 27, 2023 recommending the adoption.
6. PW4 was CO the secretary for children services. PW4 testified that they assessed the Applicants through interviews and home visit. They filed a report recommending the Adoption and the child JW to be named JMN.

Determination

7. I have carefully considered this application for adoption the various Affidavits and Reports on record as well as the relevant law. I have also considered the evidence adduced in open court. The preliminary requirements for the making of an Adoption Order are set out in Section 156(1) of the Children's Act 2001 which provides 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.'
8. The subject child was born on May 15, 2015 as evidenced by the birth certificate serial number xxxx annexed and marked 'SMN-1'. The child is now about seven (7) years eight (8) months old well above the six (6) week age limit provided for in law. The Child was given up for adoption at birth by her mother one Ms DNW. Her reason for giving up the child was that she saw that she may not be able to give the child the best. The Acknowledgement dated May 29, 2015 is annexed.
9. The child was placed at The Nest Children's Home on May 29, 2015. Thereafter Nairobi Children's Court committed the child to same children's home on July 29, 2015. The child was declared free for Adoption as per the Certificate Serial Number xxxx issued by KKPI Adoption Society on May 27, 2017. On August 11, 2017 the child was released into the custody of the Applicants under a Foster Care Agreement. The legal pre-requisites for an adoption order have accordingly been met.
10. The duty of this Court is to analyze the material placed before it and make a determination as to whether the Applicants are suitable adoptive parents. The Applicants are a married couple and Kenyan citizens. Their marriage certificate is marked 'SMN-4'. Their copies of National Identity Cards are marked 'SMN-3'.
11. The Applicants are financially stable as evidenced by the bank statements and a certificate of title to land marked 'SMN-5'. The report by the Guardian ad Litem states that the Applicants are financially stable and in a good position to provide for the needs of the child.



12. The Applicants were examined and found to be physically and mentally fit. Copy of their medical report is marked 'SMN-6'. The Applicants has also annexed copies of their Certificates of Good Conduct marked 'SMN-7' issued by the Kenya Police Service which prove they no criminal antecedents.
13. The Applicants have appointed EWG as a Legal Guardian of the child. She has signed a consent dated May 16, 2022. The letter of consent, and the copy of her Identity Card have been provided.
14. Based on the foregoing I am satisfied that the applicants are suitable adoptive parents.
15. Article 14 of the Constitution of Kenya 2010 deals with issue of Citizenship. Article 14(4) provides 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.'
16. The subject child was given up for adoption by his birth mother who is a Kenyan Citizen. The Child is therefore a Kenyan Citizen.
17. In deciding upon any matter involving a child, Courts are obliged to give priority to the best interest of the said child. Section 44(2) of the Children Act 2001 provides: -
 - ' (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'.
18. The child has lived with the Applicants in their home since she was about two (2) years old up to the present date. There is no doubt that the child has bonded with the Applicants and considers them as his parents.
19. The various reports filed in court all recommend the adoption. I am satisfied that the adoption will serve the best interests of the subject child. Accordingly, I allow this application and make the following orders: -
 1. The Applicants SNG and MWN are authorized to adopt the child known as JW.
 2. Upon adoption the child will be known as JMN.
 3. The child is declared Kenyan Citizen by birth and is entitled to all the rights and liberties due to a citizen of Kenya.
 4. The Registrar General is directed to make appropriate entries in the Adopted Children's Register
 5. The Registrar Immigration is directed to issue the child with a Kenyan Passport in accordance with Immigration Laws, rules and procedures
 6. EWG is appointed as Legal Guardian of the child.

It is so ordered.

Dated, Signed and Delivered at Nairobi this 9th day of March 2023.

E.K. OGOLA



JUDGE

Judgment read and delivered online in the presence of:

Mr. Onsongo for the Applicants

Ms. Gisiele Court Assistant

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E.K. OGOLA, J JUDGMENT ADOPTION E 072/2022

