



**In re Baby JA (Child) (Adoption Cause E115 of 2022)
[2023] KEHC 1714 (KLR) (Family) (3 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 1714 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E115 OF 2022
MA ODERO, J
MARCH 3, 2023
IN THE MATTER OF CHILDREN’S ACT NO 8 OF 2001
AND
IN THE MATTER OF ADOPTION OF BABY J A (THE CHILD)**

IN THE MATTER OF

TWM APPLICANT

JUDGMENT

1. Before this court is the originating summons dated July 12, 2022 by which the applicant T W M seek the following orders:-
 - “ 1. That the applicant, T W M, be allowed to adopt the child currently identified as Baby J A.
 2. That henceforth, the child be renamed J W M.
 3. That the child’s date and place of birth be declared to be August 17, 2020 at Nairobi county.
 4. That the child be presumed to be a Kenyan Citizen by birth; and consequently, entitled to all the rights and benefits in respect thereof.
 5. That consent of the child’s biological parents/guardians be dispensed with.
 6. That L W M and E K M be appointed as joint legal guardians of the child. in the event that the applicant herein is incapacitated or in any way unable to discharge her parental obligations.



7. That the guardian *ad litem* be discharged.
 8. That the Registrar General be directed to make the appropriate entries in Adopted Children's Register.
 9. That this court do issue such further orders as are in the interest of justice.
2. The application was supported by the statement of even date sworn by the applicant. The matter was canvassed by a way of *vive voce* evidence on the virtual platform.
 3. The applicant 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 in order to have a child to call her own and out of her desire to provide a needy child with a home.
 4. The applicant confirmed to the court that she understands the legal implications of an adoption order. She undertakes to accord to the subject child all rights due to a biological child including the right to inherit.

Analysis and Determination

5. 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.”
6. The subject child is believed to have been born on August 17, 2020. The child is therefore now aged two and a half (2 ½) years old and is above the six (6) week age limit provided for in law.
7. Buckner Kenya Adoption Services which is a registered adoption agency have annexed to their report the original copy of their certificate serial No 4x9 dated April 30, 2021 declaring the child free for adoption. In the premises, I am satisfied that 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. The applicant is a Kenyan citizen as evidenced by the copy of her national identity card which is annexed to the summons (annexture 'TM 4')
9. The applicant is a single woman. She told the court that she has never been married and has no biological child of her own. The applicant has opted for adoption in order to fulfil her desire to have a child to call her own. She also wishes to provide a needy child with a home.
10. The applicant is a businesswoman. She has two (2) shops in Nairobi selling mobile phones and phone accessories. The applicant also owns together with her brother a lorry which is rented out. She has annexed copies of her business permits as well as the log-book for the lorry. (annexures TM 7a, 7b and 7c).
11. The applicant also earns rental income from and has a plot in Mavoko town. She has annexed copies of the title deed (annexures 'TM 8 a and 8 c'). She has also annexed copies of her bank statements for an account held at Equity bank (annexture 'TM 8b'). The applicant realizes a monthly income of



- approximately Kshs 100,000 which is sufficient to provide for the needs of the child. I am satisfied that the applicant is financially stable.
12. The applicant is a Christian and intends to raise the child in the Christian faith. She has annexed a letter of recommendation dated May 15, 2019 written by Rev Barnabas Mwaniki the pastor at Word Impact Church International (annexture 'TM 5').
 13. The applicant was examined by a doctor and was found to be physically and mentally fit. She has annexed copies of clearance certificate issued to her by the Director Criminal Investigations confirming that she has no criminal record. (annexture 'TM 10').
 14. The applicant told the court that her family are aware of and support her intention to adopt the subject child. She has appointed her sister and brother as the legal guardians for the child. The proposed legal guardians L W M and E K M have both signed an affidavit of consent dated July 22, 2022 confirming their willingness to act as the legal guardians for the child.
 15. All in all I am satisfied that the applicant is a suitable adoptive parent.
 16. The subject child is a girl child who is believed to have been born on August 17, 2020. The child was found aged about one (1) week old abandoned near Mau Mau Bridge in the Kawangware Area of Nairobi. Two female good samaritans rescued the baby and rushed her to Eagle Nursing Home for medical attention. The abandonment was reported at Muthangari Police Station *vide* OB number August 14, 2020.
 17. Thereafter on November 16, 2020 the Nairobi Children's Court committed the child to New Life Home Trust for Care and Protection. On June 11, 2021 the child was released into the custody of the applicant under a foster care agreement.
 18. Article 14 (4) of the *Constitution of Kenya 2010* provides 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."
 19. The subject child was found abandoned at the age of only one (1) week old in the Kawangware area of Nairobi County in the Republic of Kenya. The child is therefore presumed to be a citizen of Kenya by birth.
 20. Efforts to trace the biological mother/relative of the child have not been successful. To date no person has come forward to claim the child. A final Police letter dated March 24, 2021 is annexed to the summons (annexture 'TM 25').
 21. Given the fact of the child's 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) (a) of the *Children Act 2022*.
 22. This is a child who was abandoned one (1) week after her birth. She 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.
 23. The child has lived with the applicant in her home for close to two (2) years. Undoubtedly the child has bonded with the applicant whom she views as her mother. I was able to see the child online. She was a healthy neatly dressed toddler calmly seated next to the applicant.



24. A home visit was conducted on January 27, 2023. The applicant resides in a two bed-roomed apartment in Umoja 1 Estate. The home was found to be spacious and well furnished and provided a suitable environment for the child. The applicant has employed a nanny to assist her in caring for the child.
25. I have carefully perused the reports prepared by the Adoption Society, the guardian *ad litem* as well as the Director Children's Services. All three reports were positive and all recommended the adoption.
26. Finally I am stratified that this adoption does serve the best interest of the subject child. Accordingly I allow this application an make the following orders:-
 1. The applicant T W M is authorized to adopt the child known as Baby J A.
 2. Upon adoption the child shall be known as J W M.
 3. The child is presumed to be a citizen of Kenya by birth and is entitled to all rights and privileges thereto.
 4. The Registrar – General is directed to make the relevant entry in the Adopted Children's Register.
 5. L W M and E K M are appointed as the legal guardians for the child.

Dated in **Nairobi** this 3rd day of **March 2023**.

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MAUREEN A. ODERO

JUDGE

ADOPTION NO. E115 OF 2022 JUDGEMENT Page 3

