



**In re Baby LP (Child) (Adoption Cause E158 of 2022)
[2023] KEHC 1716 (KLR) (Family) (3 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 1716 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E158 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 LAWRENCE PALAZZOLO (THE CHILD)**

IN THE MATTER OF

EAO 1ST APPLICANT

CMM 2ND APPLICANT

JUDGMENT

1. Before the court is the originating summons dated August 31, 2022 by which the applicants EA and CMM seek the following orders:-
 1. Spent
 2. That the applicants herein be authorized to adopt LP.
 3. That the Registrar General be ordered to make the appropriate entries in the Adopted children’s Register in respect of LP
 4. Costs be in the cause.”
2. The summon was supported by the statement of even date worn by the applicants.
3. The matter was canvassed by way of *viva voce* evidence on the virtual platform.
4. The applicants are a couple who got married to each other in the year 2014. The couple have two (2) biological children, a son born in 2015 and a daughter born in the year 2017. The applicants now wish



to adopt a subject child in order to expand their family and out of the desire to provide a needy child with a home.

5. The applicants both confirm that they understand the legal implications of an adoption order. They undertake to accord to the subject child all rights due to a biological child including the right to inherit.

Analysis and Determination

6. I have considered the application for adoption, the evidence adduced in support thereof as well as the various reports filed in court.
7. The prerequisites for before an adoption order can be made are set out in section 184 (1) (a) and (b) of the *Children's Act* 2022: -
 - (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.”
8. The subject child was born on July 4, 2019 at the Pumwani Maternity Hospital in Nairobi. He is therefore now aged three and a half (3 ½) years old and is above the six (6) week age limit provided for in law.
9. Change Trust which is a registered adoption agency have annexed to their report a copy of their certificate Serial Number xxxx declaring the child free for adoption. I am satisfied that the legal prerequisites for an adoption order have been met.
10. The duty of this court is to analyze the evidence on record to determine whether the applicants are suitable adoptive parents. The applicants are both Kenyan citizens as proved by the annexed copies of their National Identity cards (exhibits 10 and 11)
11. The applicants are a married couple who solemnized their union on July 13, 2014 at the Syokimau SDA Church. A copy of their marriage certificate serial number xxxx appears as exhibit 9 to the summons. The applicants union has been blessed by two children.
12. The applicants have a son GO who was born on January 17, 2015. A copy of the child birth certificate Serial No xxxx is exhibit 12 to the summons. They also have a daughter MA who was born on January 8, 2018. A copy of her birth certificate serial number xxxx appears as exhibit 13.
13. The applicants told the court that they wished to adopt a child in order to expand their family and out of their desire to provide a needy child with a home.
14. The applicants are both in gainful employment. The 1st applicant is an accountant and currently works as a finance administrator with a [particulars Withheld] Nairobi whilst the 2nd applicant runs [particulars Withheld] in Ngong town. The 1st applicant has annexed copies of his payslips as proof of his employment exhibit 16. The couple have also annexed copies of bank statements for an account held at [particulars Withheld] - Ngong branch.
15. Together the applicants realise a monthly income of approximately Kshs 150,000. They also own land in Ngong – Kajiado County. I am satisfied that the applicants are financially stable and have sufficient means to provide for the needs of their children.
16. The applicants are christians and intend to raise the child in the christian faith. Both were examined by a doctor and were found to be physically and mentally fit.



17. The applicants have annexed copies of clearance certificate issued to each by the Directorate of Criminal Investigations (exhibit 17) proving that neither has a criminal record.
18. The applicants told the court that their extended family are aware of and support their intention to adopt the subject child. They have appointed as legal guardians for the child the 1st applicants brother and sister in law. The proposed legal guardians KOO and JBO have both signed a letter of consent dated September 30, 2019, confirming their willingness to act as the legal guardians for the child.
19. All in all I am satisfied that the applicants are suitable adoptive parents.
20. The subject child was born at the Pumwani Maternity Hospital on July 4, 2019. The child's biological mother whose name was given as CN absconded from the hospital leaving her baby behind. The mother could not be reached on the telephone contact which she provided to the hospital.
21. The abandonment was reported at Shauri Moyo Police Station vide OB Number xx of July 8, 2019. Thereafter on June 21, 2020 the Nairobi Children's Court committed the child to the house of charity children's home for care and protection. On February 27, 2022 the child was released into the custody of the applicants under a foster care agreement.
22. Efforts made by police and by social workers to trace the biological mother of the child were not successful. The contact left by the mother one LK when reached on phone stated that she knew the mother as neighbour and not a relative. Calls made to the number left by the mother went unanswered. The police eventually issued a final letter dated March 30, 2021.
23. 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. In the circumstances I waive the requirement for consent in line with section 187 (1) (a) of the Children Act 2022 provide:-
24. "(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)
25. This is child who was abandoned shortly after his birth. The child's biological mother was unable or unwilling to take and care for her child. The child 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.
26. The child has lived with the applicants for over one (1) year. He has bonded with them and indeed this is the only family the child knows. I was able to see the child online. He was a healthy boy who cheerfully answered the questions put to him by the court. The child was obviously very comfortable in the company of the applicants.
27. A home visit was conducted by the Children's Officer. The applicants reside in their own home in [particulars Withheld]. The home is within a secure compound with adequate space and facilities for the child.
28. I have carefully perused the reports prepared by the adoption agency, the guardian *ad litem* and the Director Children's Services. All three reports were positive and all recommend the adoption.
29. Finally I am satisfied that this adoption serves the best interest of the subject child. Accordingly I allow the application and make the following orders:-
 1. The applicants EAO and CMM are authorized to adopt the child known as LP.



2. Upon adoption the child will be known as MMA.
3. The Registrar-General is directed to make the relevant entry in the adopted children's register.
4. KOO and JBO 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

