



**In re Baby M (Adoption Cause E166 of 2022)
[2023] KEHC 1718 (KLR) (Family) (3 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 1718 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

ADOPTION CAUSE E166 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 M ALIAS

BABY E M ALIAS ABANDONED BABY GIRL

(THE CHILD)

IN THE MATTER OF

NMM 1ST APPLICANT

RBK 2ND APPLICANT

JUDGMENT

1. Before this court is the originating summons dated September 12, 2022 by which the Applicants N M M and R B K seek the following orders:-
 1. That the consent of the biological parents of Baby M alias Baby E alias Abandoned Baby Girl (the Child) be dispensed with since the child was abandoned shortly after birth and there whereabouts are unknown.
 2. That the Applicants be authorized to adopt Baby M alias Baby E M alias Abandoned Baby Girl (the Child) to be known as R B
 3. That P M W and R M M both of P.O. Box 6892-00200 Nairobi in the Republic of Kenya be appointed as the Legal Guardians of Baby M alias Baby E M alias Abandoned Baby Girl (the Child) upon granting the adoption Order.



4. That the Registrar General be ordered to make the appropriate entries in the Adopted Children's Register in respect to Baby M alias Baby E M alias Abandoned Baby Girl (the Child).
 5. That R B be considered a Kenyan Citizen
 6. That the Court be pleased to make any further orders it deems necessary.
2. The application was supported by the statement of even date sworn by the Applicant. The matter was canvassed by way of vive voce evidence on the virtual platform.
 3. The Applicants are a couple who got married to each other in the year 2014. The couple have no biological children of their own but they do have a four (4) year old adopted daughter.
 4. The Applicants confirmed that they understood the legal implication of an adoption order. They undertook to accord to the subject child all rights due to a biological child including the right to inherit.

Analysis and Determination

5. The prerequisites which must be met before an adoption order can be made are set out in Section 184 (1) (a) and (b) of the [Children's Act 2022](#) which provides as follows:-
 - “(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.”
6. The subject child is a girl child who was born on April 28, 2021. The child is therefore now aged two (2) years old and is above the six (6) week age limit provided for in law.
7. Little Angels Network a registered adoption agency have annexed to their report a copy of their certificate Serial Number 002232 dated January 5, 2022 declaring the child Free for Adoption. I am satisfied that the legal pre requisites of the an adoption order have been met.
8. The duty of this court is analyze the evidence on record to determine whether the Applicants are suitable adoptive parents. The Applicants are both Kenyan citizens as evidence by the copy of their National Identity Cards annexed to the summons (Annexure 'NMM8').
9. The Applicants got married to each other on June 21, 2014. They have annexed to the summons a copy of their marriage certificate Serial Number 674031 (Annexure “NMM-9”).
10. The couple have no child of their own but they do have a daughter whom they adopted in May 2021. A copy of certificate of Entry in the Adopted Children's Register is annexed as “NMM-12”. They now wish to adopt another child in order to expand their family.
11. The Applicants are both gainfully employed. The 1st Applicant works as a Research Scientist with KEMRI whilst the 2nd Applicant is an operations manager with Safaricom. The couple have annexed copies of their payslips and letters from their employers as proof of employment. They have also annexed copies of bank statements from Kenya Commercial Bank and Standard Chartered Bank (Annexures “NMM-10”). I am satisfied that the Applicants have the means to provide for the needs of the child.



12. The Applicants are a Christians and intend to raise the child in the Christian faith. They were both examined by a doctor and were found to be both mentally and physically fit. The Applicants have annexed copies of the Clearance Certificate issued to them by the Directorate of Criminal Services, (Annexure “NMM-13”) confirming that they have no criminal record.
13. The applicants told the court that their respective families are aware of and support their intention to adopt the child. They have appointed their family friends P M W and R M M as the legal guardians for the child. The said legal guardians have signed a letter of consent dated January 26, 2019 confirming their willingness to be act as the legal guardian for the child, (Annexure RNK “NMM-11”).
14. All in all I am satisfied that their Applicant is a suitable adoptive parents.
15. The subject child is a girl child who was born on April 28, 2021 at the Machakos Level 5 Hospital. The child’s biological mother whose name was given as E M absconded from the hospital leaving her baby behind. The mother never came back to collect her child. The matter was reported to Police vide OB Number 30 of May 18, 2021.
16. Thereafter on 1May 9, 2021 the Machakos Children’s Court committed the child to the NEST Children’s Home for Care and Protection. On September 12, 2022 the child was released into the custody of the Applicants under a Foster Care Agreement.
17. The subject child was abandoned at birth. The child biological mother was unable or unwilling to care for the child. 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](#) .
18. 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)
19. This is a child whose biological mother was unable or unwilling to keep her. 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.
20. The child has lived with the Applicants for the past one (1) year. I have no doubt she has bonded with the Applicants. I was able to see the child online. She was a healthy happy child who was comfortably seated on the lap of the 2nd Applicant. I observed that the child was totally at ease in the presence of the Applicants.
21. A home visit was undertaken by the Childrens Officer. The Applicants reside in a spacious three bed-roomed Apartment at KEMRI living quarters. The home is close to social amenities like schools, churches, hospitals markets etc. The environment was found to be suitable for raising a young child.
22. I have carefully perused the reports prepared by the Adoption Society, the Guardian *Ad Litem* and the Director Children Services. All the three (3) reports were positive and all recommend the adoption.



23. Finally I am satisfied that the adoption does serve the best interests of the subject child. Accordingly I allow this application and make the following orders:-

1. The Applicants N M M and R B K are authorized to adopt the child known as Baby M alias Baby E M alias Abandoned Baby Girl (the Child).
2. Upon adoption the child will be known as R B.
3. The Registrar-General is directed to make the relevant entry in the Adopted Children's Register.
4. M W and R M 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

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