



REPUBLIC OF KENYA



**In re MO (Child) (Adoption Cause E160 of 2022)
[2023] KEHC 1473 (KLR) (Family) (3 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 1473 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E160 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 MO (THE CHILD)**

IN THE MATTER OF

FWK 1ST APPLICANT

JKM 2ND APPLICANT

JUDGMENT

1. Before the court is the Originating Summons dated September 6, 2022 by which the Applicant FWK and JKM seek the following orders:-
 1. That the Applicants be authorized to adopt Baby MO a minor, who is to be known as EBW and the Registrar General be directed to enter this adoption into the Registrar of Adoptions.
 2. That JKK and CNM be appointed as the legal Guardians of the minor.
 3. That the child be presumed to be born in Kenya.
2. The Application was supported by the statement of even date sworn by the Applicants. 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 2015. The couple have no biological children of their own. They wish to adopt the subject child in order to have a child to call their own.



4. The Applicants both confirmed 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

5. I have considered this application, the Reports filed in court as well as all the evidence adduced in support thereto. The prerequisites for adoption are set out in Section 184 (1) of the [Children Act 2022](#) which provides –

' 184(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.
- b. The child has attained the age of six weeks.'

6. The subject child is a boy child who was born on or about June 3, 2018. He is therefore, now aged four and a half (4½) years old and is well 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 reports the Original copy of their Certificate Serial Number xxxx dated November 4, 2021 declaring the child Free for Adoption. I am satisfied That the legal prerequisites for an adoption order has been met.
8. 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 evidenced by the copies of their National Identity Cards which are annexed to the Summons (pages 1 and 2).
9. The Applicants are a couple who got married on September 26, 2015 at the xxxx Church in Embakasi. A copy of their Marriage Certificate Serial Number xxxx is annexed at page 4 of the Summons. Their union has not been blessed with any child hence the decision of the Applicants to adopt a child in order to complete their family.
10. The Applicant are both in gainful employment. The 1st Applicant works with [Particulars withheld] as the PCS for the Mount Kenya Region. The 2nd Applicant is a trained Nurse and works at the [Particulars withheld] Health Centre in [Particulars withheld] County. The Applicants have annexed copies of their respective payslips as proof of their employment pages 35 – 40.
11. The Applicants also own land in Machackos County. They have annexed copies of bank statement for an account held with Co-operative Bank. (Pages 30 to 34). Together the Applicants realize a monthly income of approximately Kshs 100,000/= which is sufficient to enable them provide for the needs of the child. I am satisfied That the Applicants are financially stable.
12. The Applicants were both examined by a doctor and were found to be physically and mentally fit. They have annexed copies of clearance Certificates issued to each by the Director of Criminal Investigations proving That neither has a Criminal record (pages 45 to 46).
13. The Applicants are both committed Christians who play an active role in their church. The 1st Applicant is a [Particulars withheld]. They intend to raise the child in the Christian faith. The couple have annexed a copy of a letter of recommendation dated February 6, 2020 written by MK, the Church Secretary of the AICE.



14. The Applicants told the court That their families are aware of and support their intention to adopt the subject child. They have appointed the brother of the 1st Applicant and his wife as the legal Guardians for the child. The proposed legal Guardians JKK and CNM have signed a letter of consent dated September 6, 2022 confirming their willingness to act as legal Guardians for the child.
15. All in all, I am satisfied That the Applicants are suitable adoptive parents.
16. The subject child is believed to have been born on June 3, 2018. The child was found abandoned on January 3, 2019 at the age of six (6) months near the KC Church. A good Samaritan rescued the baby and reported the abandonment at Kayole Police Station vide OB Number xxxx of January 3, 2018.
17. Thereafter on April 5, 2019, the Nairobi Children’s Court committed the child to xxxx Children’s Home for Care and Protection. On November 8, 2021 the child was placed into the custody of the Applicants under a Foster Care Arrangement.
18. Article 14 (4) of the Constitution of Kenya 2010 provides that:-
 - ’ 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 of Kenya.’
19. The subject child was found abandoned at the age of six (6) months in the xxxx area of Nairobi County within the Republic of Kenya. The child is therefore, presumed to be a citizen of Kenya by birth.
20. Efforts to trace the biological mother/relatives of the child have not been successful. To date no person has come forward to claim the child. A final Police letter dated September 27, 2018 is annexed to the Summons (page 52).
21. Given the facts of the child’s abandonment there exists no known person from whom consents for this adoption can be sought and/or obtained. In the circumstances I waive the requirements for consent in line with Section 187 (1) (a) of the Children Act 2022.
22. 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). In all actions concerning children, whether undertaken by public or
 - (1) 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)
23. This is a child who was abandoned at the age of six (6) months. He 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.
24. The child has lived with the Applicants in their home for the past year. He has undoubtedly bonded with the Applicants whom he now views as his parents. I was able to see the child online. He was a neat and cheerful child who was and obviously at ease in the presence of the Applicants.
25. A Home visit was conducted on January 23, 2023. The Applicants live in their own home in Machakos County. The compound was found to be large and fenced. The main house is a two bed-roomed home and is connected to water and electricity. The home was found to be a conducive environment for raising the child.



26. I have carefully perused the reports filed by the Adoption Agency, the Guardian Ad Litem and the Director Children's Services. All three reports were positive and all recommend the adoption.
27. Finally, I am satisfied That this adoption does serve the best interest of the subject child. Accordingly, I allow this application and make the following orders.
- 1) The Applicants FWK and JKM are authorized to adopt the child known as BABY MO
 - 2) Upon adoption the child will be known as EBW .
 - 3) The child is presumed to be a Kenyan Citizen 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) JKK and CNM 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

