



**In re Baby JK (Adoption Cause E019 of 2022)
[2023] KEHC 1506 (KLR) (2 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 1506 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
ADOPTION CAUSE E019 OF 2022
MW MUIGAI, J
MARCH 2, 2023
IN THE MATTER OF CHILDREN ACT 2001
AND
IN THE MATTER OF BABY JK**

IN THE MATTER OF

JNM 1ST APPLICANT

ANM 2ND APPLICANT

JUDGMENT

1. The Applicants, JNM – ID No 738xxxx - Tel No 0715xxxx and ANM - ID No 102xxxx – Tel No 072xxxxx(“the Applicants”) sought by their application to be allowed by this Court to adopt Baby JK (hereafter “the child”).
2. Vide originating summons application dated October 13, 2022 the Applicants sought the following orders, that the requirements of Section 186 (8) (a) of the Children’s Act, 2022 be waived as provided for under section 187 (1) of the Act; that DMM be appointed *guardian ad litem* in this case; that the Applicants be authorized to adopt baby JK and the baby be known as JKN ; that EMN and OPM be appointed the legal Guardians of the child; that the Director of Children’s Department to investigate the case and file a report; that the Registrar General be ordered to make in the adopted Children’s register and entry recording the adoption in accordance with the particulars set out in the schedule attached hereto. DMM was appointed by this Court as *guardian ad litem* on December 15, 2022.
3. The Applicants herein are residents of Mawele village, Mwala area within Machakos. They are husband and wife married in the year 1992 as per attached copy of marriage certificate serial number xxxxx. The 1st Applicant is a farmer while the 2nd Applicant is a manager at xxx. The Applicants annexed the following documents in support of their application ;copies of IDs for both ApplicantsMarriage CertificateBiological children consent letters as well as copies of IDsGuardianship confirmation form,



letter & ID Cards
Land sale agreement
CBO Certificates
Bank Statements
Police clearance Certificates for both Applicants,
Reference church letter from Fr In-charge Mwala Catholic Parish,
Medical reports for both the 1st and 2nd Applicants,
Care agreement between the Applicants and KCH Adoption Society

4. The child (JK) who is the subject of the present adoption proceedings was presumably born on December 14, 2012. He was abandoned at BK and DK doorstep on December 16, 2012. He was rescued and the matter reported to Ongata Rongai Police Station under OB xx/xx/12/2012. The infant was committed to New Life Mission for Care and Protection at the Kibera Law Courts on August 12, 2013 *vide* Protection and Care case Number 266/2013 for 3 years. The committal was extended for three years at Ngong Law Courts *vide* Protection and Care Case No 144 of 2017 on September 6, 2017. A final Police letter from Ongata Rongai Police station dated January 16, 2015 indicated that nobody had claimed the child since he was rescued and efforts to trace his mother or kindred had been unfruitful. The minor was freed for adoption by the Kenya Children's Home Adoption Society Case Committee on December 8, 2012 *vide* a certificate declaring a child free for adoption Serial No xxxx.
5. The following documents were availed from Kenya Children's Home Adoption Society for baby JK .
 1. Birth Certificate of the minor
 2. Initial police letter
 3. Summary report
 4. Admission form
 5. Clinic card
 6. HIV test
 7. Medical Report
 8. Committal request
 9. Committal Order
 10. Final police letter of January 16, 2015
6. Pursuant to Section 156(1) of the *Children Act*, the Kenya Children's Home Adoption Society, the relevant Adoption Society, prepared and filed in Court a favorable report in respect of the proposed adoption of the child by the Applicants. Another report in respect of the proposed adoption of the child by the Applicants was prepared by the Director of Children's Services, and this report was similarly in favor of the proposed adoption. The guardian ad litem, DMM also filed the statutory report in which he noted that the proposed adoption of the child by the Applicants would be in the best interests of the child.
7. The Kenya Children's Home Adoption Society filed their report dated November 21, 2022. Mr Ndotono the Adoption Society Programme Officer appeared in Court on February 9, 2023 in respect of this Adoption. The agency report contains family and professional background information of the child's adoptive parents. According to the report the Applicants made an adoption application to Kenya Children's Home Adoption Society on January 25, 2022. The Applicants were taken through the relevant interviews, a home assessment was carried out as well as the pre –placement counselling. The Applicants were found eligible. A Case Committee sitting on April 20, 2022 approved their application. Baby JK was placed with the Applicants on May 6, 2022.



8. Prior to the placement baby Jeremiah was declared free for adoption by the society's case committee on April 20, 2022 where a freeing certificate Serial Number 1914 was issued in compliance to Section 156(1) of the *Children's Act, 2022*.
9. The Applicants have been married for more than 33 years. They have two biological daughters aged 32 and 29 years old respectively. The Prospective adoptive father engages in farming while the adoptive mother owns a Rescue Centre where she is a Director earning a net income of 35,000/-. The Applicants herein are adopting Baby JK , the child subject of these proceedings for they felt they needed to open their home to needy children. The applicants live in a permanent owner occupier house (3 bedroomed house) in Mwala. The extended family are supportive of their intention to adopt the minor placed under their care. Their adult children are also in support of the adoption and the Applicants have even chosen their 2nd born daughter EMN and her husband OPM to be the legal guardians. On observation during the interview sessions and prior meetings it was observed that the Applicants and the minor have bonded well with the minor. The Adoption Society recommend Adoption.
10. The Director of Children Services through a Report dated January 26, 2023 in respect of the proposed adoption of the child by the Applicants was prepared by Sarah Solomon, Mwala Sub County Children Officer. Sarah Solomon Mwala Sub- County Children's officer appeared in Court on February 9, 2023 in respect of this proceedings and stated that the minor has bonded well with the Applicants and he recognizes the Applicants as his parents and also have a good relationship with the biological children of the family. The minor has been enrolled in a local primary school near home. The report contains family background information of the Child's Adoptive Parents. The Applicants are desirous to have a male child hence their motivation towards this adoption. Their biological daughter desires to have a brother and they are very excited by their parent's decision to adopt the minor herein. During the home visit it was observed that the applicants have bonded well with the minor and they live comfortably in their house and have the required amenities. The applicants are socially and economically able to take care of the child. They do not have any criminal records. The adoption was recommended.
11. The guardian ad litem, DMM filed his Report on dated January 18, 2023 in support of these adoption proceedings. He stated that he has known the applicants for period of over 15 years. He has visited the family and observed that the child has interacted well with the Applicants as well as the other children of the family. The guardian ad litem recommended the adoption.
12. The legal guardians EMN and OPM filed their joint Affidavit of Fitness sworn on October 24, 2022.
13. All the statutory reports that have been filed in respect of the proposed adoption of the child by the Applicants have recommended that this Court allows the adoption of the child. This Court has evaluated the facts of this adoption. This is a local adoption. It is evident that the Applicants has fulfilled all the legal requirements relative to the adoption of the child.
14. The home visits by the guardian ad Litem, the Adoption Society and the Director of the Children's Services established that the Applicants are financially and socially stable and have emotional capability to provide for the upkeep and education of the child and give parental care. This Court observed the Applicants with the child in Court and it was evident that in the period that the Applicants have had the custody of the child, the child has bonded well. The child considers the Applicants to be his parents.

Disposition

1. On the basis of a careful examination of the documents presented before this Court as well as the observations made therein, this Court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicant. Hence, this Court allows the Applicant's application.



2. The Applicants, JNM and ANM are hereby allowed to adopt Baby JK . Henceforth, the child shall be known as JKN .
3. The child's date of birth is December 14, 2012 and the place of birth shall be Ongata Rongai.
4. The child is a Kenya Citizen by birth and entitled to all rights of a Kenyan citizen.
5. EMN and OPM shall be the legal guardians of the child should such eventuality arise.
6. This Court directs the Registrar General to duly enter this order in the Adoption Register.
7. That the Directorate of Children Services to carry out supervision on the said adoption and file a report on the ongoing safety/security within one year of the Adoption in the best interest of the child Section 8 of *Children's Act, 2022*.
8. The *guardian ad litem* is hereby discharged.

It is so ordered.

DELIVERED SIGNED & DATED IN OPEN COURT AT MACHAKOS THIS 2ND DAY OF MARCH 2023 (PHYSICAL/VIRTUAL CONFERENCE).

M W MUIGAI

JUDGE

