



REPUBLIC OF KENYA



**In re AW (Baby) (Adoption Cause 136 of 2018)  
[2023] KEHC 17650 (KLR) (Family) (20 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 17650 (KLR)

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

**FAMILY**

**ADOPTION CAUSE 136 OF 2018**

**EKO OGOLA, J**

**APRIL 20, 2023**

**IN THE MATTER OF THE CHILDREN'S ACT, 2001**

**AND**

**IN THE MATTER OF ADOPTION OF BABY AW**

**IN THE MATTER OF**

**JRWM ..... APPLICANT**

**JUDGMENT**

1. Before this court is the originating summons dated March 29, 2022 by which the applicant JRWM seeks the following orders: -
  1. That the applicant be and is hereby authorized to adopt Baby AW (the child).
  2. That if the adoption order is granted the said child be thereafter known as AW.
  3. That the child be equally considered as a Kenyan citizen
  4. That the consent of the biological parents of the child be and is hereby dispensed with since the child was abandoned
  5. That Dr DNM & Mrs JNO may be appointed as the legal guardians of the child in the event of death of the applicant or incapacity of the applicant, rendering her un-available or incapable of taking care of the child.
  6. That the Registrar General be and is hereby ordered to make the appropriate entries in the Adopted Children's Register in respect of AW (the child)
2. The summons was supported by the statement in support of even date sworn by the applicant. The matter was canvassed by way of *viva voce* evidence on the online platform.



3. PW1 was RM the applicant herein; she relied on her filed witness statement dated August 28, 2018. PW1 testified that she is not married and does not have other children. She expressed her interest to adopt the baby. PW1 testified that she is able to take care of the baby. PW1 understands the implication of an adoption order and that the baby will inherit her property and wishes to adopt the child.
4. PW2 was DNM the intended legal guardian for the child. PW2 testified that he understands the meaning of being a legal guardian and has signed a consent to that effect; he expressed his willingness to take care of the child in the absence of the applicant.

### **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 was abandoned at Kiambu District Hospital on December 29, 2015 at the age of 14 days. The child is now above the six (6) week age limit provided for in law. The child was abandoned at birth.
7. The child was rescued and taken to Mogra Soul Winner Rescue Centre. Thereafter on September 26, 2017 the Kiambu Children's Court committed the child to same rescue centre. The child was declared free for adoption as per the certificate serial number xxx issued on November 6, 2017. On November 11, 2017 the child was released into the custody of the applicant under a foster care agreement. The legal pre-requisites for an adoption order have accordingly been met.
8. The duty of this court is to analyze the material placed before it and make a determination as to whether the applicant is a suitable adoptive parent. The applicant is a Kenyan citizen as per the attached copy of her National Identity marked as Exh-1 on the documents supporting the originating summons.
9. The applicant is financially stable as evidenced by the bank statements and title deed marked as Exh-4. The report by the guardian *ad litem* states that the applicant is financially stable and in a good position to provide for the needs of the child.
10. The applicant was examined and found to be physically and mentally fit. Copy of her medical report is marked Exh-13. The applicant has also annexed a copy of her certificate of good conduct marked Exh-17 issued by the Kenya Police Service which prove she has no criminal antecedents.
11. The applicant has appointed DNM and JNO as legal guardians of the child. They have signed a consent dated August 30, 2018. The letter of consent, and the copies of their identity cards have been provided and marked Exh-5a and 5b.
12. Based on the foregoing I am satisfied that the applicant is a suitable adoptive parent.



13. Article 14 of the Constitution of Kenya 2010 deals with issue of citizenship. Article 14(4) provides as follows:

“(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.”

14. The subject child was abandoned at the Kiambu District Hospital in Kiambu County which is within the republic of Kenya. The child is therefore a Kenyan citizen.

15. In deciding upon any matter involving a child, courts are obliged to give priority to the best interest of the said child. Section 44(2) of the Children Act 2001 provides: -

“(2) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration”.

16. The child has lived with the applicant in her home since she was about One (1) year and nine (9) months old up to the present date. There is no doubt that the child has bonded with the applicant and considers her as her mother.

17. The various reports filed in court all recommend the adoption. I am satisfied that the adoption will serve the best interests of the subject child. Accordingly, I allow this application and make the following orders: -

1. The applicant JRWM is authorized to adopt the child known as Baby AW.
2. Upon adoption the child will be known as AW.
3. The child is declared Kenyan citizen by birth and is entitled to all the rights and liberties due to a citizen of Kenya.
4. The Registrar General is directed to make appropriate entries in the Adopted Children’s Register
5. The registrar immigration is directed to issue the child with a Kenyan passport in accordance with immigration laws, rules and procedures
6. Dr DNM and Mrs JNO are appointed as legal guardians of the child.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20<sup>TH</sup> DAY OF APRIL 2023.**

**E.K. OGOLA**

**JUDGE**

**Judgment read and delivered online in the presence of:**

**Mr. Mugo for the Applicant**

**Ms. Chepkemoi Court Assistant**

