



**In re AW (Baby) (Adoption Cause E066 of 2022)
[2023] KEHC 3258 (KLR) (20 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 3258 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
ADOPTION CAUSE E066 OF 2022**

**EKO OGOLA, J
APRIL 20, 2023**

BETWEEN

PMK 1ST APPLICANT

JWM 2ND APPLICANT

AND

LITTLE ANGELS NETWORK RESPONDENT

JUDGMENT

1. Before this Court is the Originating Summons dated April 28, 2022 by which the applicants PMK and JWM seek the following orders: -
 - 1) Pursuant to Article 14(4) of the *Constitution of Kenya, 2010* and Section 11 of the *Children's Act, 2010*, this honorable court be pleased to declare that the child AW is a Kenyan citizen by birth;
 - 2) Pursuant to the provisions of Section 159 of the *Children's Act, 2001*, this honorable court be pleased to dispense with the requirements of the adoption as required by the provisions of Section 158 of the *Children's Act, 2001*;
 - 3) The Applicants PMK and JWM be authorized to adopt AW (the child);
 - 4) That upon making of the adoption Order, the child be known as AWM
 - 5) That upon making the Adoption Order, NMK be appointed as the legal guardian of the child as provided under the provision of Section 164 of the *Children's Act, 2001*
 - 6) Upon making of the Adoption Order, the Registrar-General do make an entry recording the adoption and the estimated date of birth of the child as September 28, 2015 in the Adopted Children Register as provided under Section 170 of the *Children's Act, 2001*



- 7) That the costs of this application be in the cause.
2. The Summons was supported by the statement of even date sworn jointly by the applicants and an Affidavit in support. The matter was canvassed by way of viva voce evidence on the online platform.
3. PW1 was PMK the 1st Applicant herein. He testified that he is 56 years old, a businessman living in Runda Riviera Estate. He is married with three children who are all boys. PW1 has known the child since 2017. The Applicants are desirous of adopting a girl, to educate her and take care of her. PW11 understands that the child will be entitled to inherit his wealth.
4. PW2 was JAnet Wanjiku Maina the 2nd Applicant herein. She testified that she is 54 years old and married to PW1 for 32 years and that they have three children who are already grown up and educated. They took custody of the child in 2017. She is currently seven and half years.
5. PW3 was NMK. He testified that he is the intended legal guardian for the child; he is aged 43 years old and he supports the adoption. He lives in Buruburu and works for United Nations. He testified further that the PW1 is his elder brother and that PW3 is willing to take care of the child in case of any eventuality.
6. PW4 was JMW who testified that he is a social worker at Little Angels Network; that the child was declared free for adoption on December 1, 2021; that the Applicants approached Little Angels network which then carried out due diligence and found out that the child and the applicants bonded well. He asked the court to grant the adoption.

Determination

7. 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 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.”
8. The subject child is estimated to have been born on September 28, 2015 and her birth certificate bears the serial number XXXX. The child is now about seven (7) years Six (6) months old well above the six (6) week age limit provided for in law. The Child is alleged to have been stolen under mysterious circumstances in Githogoro area by one Ann Mikwa who was arrested and charged. The child was admitted into the Nest Children's Home pending investigation
9. The child was placed at The Nest Children's Home on September 30, 2015. Thereafter Nairobi Children's Court committed the child to same children's home on December 5, 2018 vide care and protection 256 of 2015 for a period of three (3) years. The police efforts to trace the child's family bore no fruits and the child was not claimed. The child was declared free for Adoption as per the Certificate Serial Number XXXX issued by Little Angels Network on December 1, 2021. On July 19, 2018 the child was released into the custody of the Applicants under a Foster Care Agreement. The legal pre-requisites for an adoption order have accordingly been met.
10. The duty of this Court is to analyze the material placed before it and make a determination as to whether the Applicants are suitable adoptive parents. The Applicants are a married couple and Kenyan citizens. Their marriage certificate serial number XXXX is annexed at page 48 Of the documents.



11. The Applicants are financially stable as evidenced by the bank statements and a certificates of title to land and log books to different motor vehicles provided. The report by the Guardian ad Litem states that the Applicants are financially stable and in a good position to provide for the needs of the child.
12. The Applicants were examined and found to be physically and mentally fit. Copies of their medical report have been provided. The Applicants have also provided copies of their Certificates of Good Conduct issued by the Kenya Police Service which prove they have no criminal antecedents.
13. The Applicants have appointed NMK as a Legal Guardian of the child. He has signed a consent dated April 28, 2022 provided together with his Identity Card from pages 31-34.
14. Based on the foregoing I am satisfied that the applicants are suitable adoptive parents.
15. 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.”
16. The subject child was allegedly stolen under mysterious circumstances from Githogoro area which is within the Republic of Kenya. The Child is therefore a Kenyan Citizen.
17. 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”.
18. The child has lived with the Applicants in their home since she was about three (3) years old up to the present date. There is no doubt that the child has bonded with the Applicants and considers them as her parents.
19. 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 Applicants PMK and JWM are authorized to adopt the child known as AW.
 - 2) Upon adoption the child will be known as AWM.
 - 3) The child’s date of birth is declared to be 28th September 2015; 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) NMK is appointed as Legal Guardian of the child.

It is so ordered.



DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF APRIL 2023.

E.K. OGOLA

JUDGE

Judgment read and delivered online in the presence of:

M/s. Onyiego for the Applicants

Ms. Eleanor Court Assistant

