



In re Baby MM aka Baby AMM aka abandoned Baby Girl aka Baby AS aka an abandoned Child (Adoption Cause E040 of 2022) [2023] KEHC 3049 (KLR) (Family) (13 April 2023) (Judgment)

Neutral citation: [2023] KEHC 3049 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E040 OF 2022
EKO OGOLA, J
APRIL 13, 2023
IN THE MATTER OF THE CHILDREN'S ACT, 2001
AND
IN THE MATTER OF ADOPTION OF BABY MMM AKA BABY AMM
AKA ABANDONED BABY GIRL AKA BAS AKA AN ABANDONED CHILD
BY**

**IN THE MATTER OF
PWT APPLICANT**

JUDGMENT

1. Before this court is the originating summons dated March 29, 2022 by which the applicant PWT seeks the following orders: -
 1. That the applicant be authorized to adopt Baby AMM, a minor who is to be known as AWT and the Registrar General be directed to enter this adoption into the Register of Adoptions
 2. That NTK and JLFS be appointed as the legal guardians of the minor presumed to have been born in Kenya.
2. The summons are 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 PWT the applicant herein. PW1 testified that she is not married and does not have other children. She expressed her interest to adopt the baby herein. 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 LCK the court appointed guardian *ad litem* who testified that she visited the applicant's home and found that the child is well taken care of. PW2 stated that it is in the best interest of the child if the adoption application is allowed.
5. PW3 was JLS the intended legal guardian for the baby. PW3 testified that herself and her husband NTK are ready and willing to be there for the baby. PW3 filed a consent dated March 29, 2022 to that effect.

Determination

6. 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.”
7. The subject child was found abandoned on August 1, 2019 which is the presumed date of birth. The child is now above the six (6) week age limit provided for in law. The child was abandoned at birth.
8. The child was placed at Imani Children's Home. Thereafter on October 24, 2019 the Nairobi Children's Court committed the child to same children's home. The child was declared free for adoption as per the certificate serial number xxx issued by Buckner Kenya Adoption Society on August 20, 2021. On December 12, 2021 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.
9. The duty of this court is to analyze the material placed before it and make a determination as to whether the applicant is suitable adoptive parents. The applicant is a Kenyan citizen as per the attached copy of her national identity card at pg-1 of the documents supporting the originating summons.
10. The applicant is financially stable as evidenced by the bank statements, pay slips and a certificate of titles to land from pgs 26-45 of the bundle of documents. 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.
11. The applicant was examined and found to be physically and mentally fit. Copy of her medical report is at pages. 16-22. The applicant has also annexed a copy of her certificate of good conduct at page 46 issued by the Kenya Police Service which prove she has no criminal antecedents.
12. The applicant has appointed NK and LSK as legal guardians of the child. They have signed a consent dated December 29, 2020. The letter of consent, and the copies of their identity cards have been provided at pgs 47-51.
13. Based on the foregoing I am satisfied that the applicant is a suitable adoptive parent.
14. 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.”



15. The subject child was abandoned at birth and was rescued by good samaritan at Joska which is within the republic of Kenya. The child is therefore a Kenyan citizen.
16. 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”.
17. The child has lived with the applicant in her home since she was about two (2) years old up to the present date. There is no doubt that the child has bonded with the applicant and considers her as her mother.
18. 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 PWT is authorized to adopt the child known as Baby AMM.
 2. Upon adoption the child will be known as AWT.
 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. NTK and JLFS are appointed as legal guardians of the child.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 13TH DAY OF APRIL 2023.

E.K. OGOLA

JUDGE

Judgment read and delivered online in the presence of:

M/s. Muhanda for the Applicant

Ms. Gisiele Court Assistant

