



**In re Baby MW (Child) (Adoption Cause E233 of 2022)
[2023] KEHC 18396 (KLR) (Family) (19 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 18396 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E233 OF 2022
MA ODERO, J
MAY 19, 2023
IN THE MATTER OF CHILDREN’S ACT NO 8 OF 2001
AND
IN THE MATTER OF ADOPTION OF BABY MW (THE CHILD)**

IN THE MATTER OF

MWK 1ST APPLICANT

SMN 2ND APPLICANT

JUDGMENT

1. Before this court is the originating summons dated November 18, 2022 by which the applicants MWK and SMN seeks the following orders:-
 - “1. That the applicant be authorized to adopt the child; Baby MW who is a Kenyan citizen, presumed to be born on the July 25, 2020.
 2. That upon adoption, the child be known as SDM.
 3. That EWK of Kenyan national identity card number xxxxxxxx be appointed as legal guardian of the child; Baby MW.
 4. That the Registrar General be directed to enter this adoption into the Register of Adoptions and a subsequent birth certificate do issue by the registrar of births and deaths.”
2. The application was supported by the affidavit 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 in the year 2008. Their union has not been blessed by any children. The applicants now wish to adopt the subject child in order to fulfil their desire to have a child of their own.
4. The applicants each confirm that they understand the legal implications of an adoption order. They undertake to accord the subject child all rights due to a biological child in including the right to inheritance.

Analysis and Determination

5. I have considered the application for adoption, the evidence adduced in support thereof as well as the various reports filed in court.
6. The prerequisites for before an adoption order can be made are set out in section 184 (1) (a) and (b) of the *Children's Act* 2022: -
 - “(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; and
 - (b) the child has attained the age of six weeks.”
7. The subject child is a boy child who was born on July 25, 2020. A copy of his birth certificate serial number xxxx is annexed to the summons (annexture ‘MS-1’)
8. Change Trust Society which is a registered adoption agency have annexed to their report the original copy of their certificate serial number xxxx dated April 30, 2021 declaring the child free for adoption. I am satisfied that the legal requirements for an adoption order have been met.
9. 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 proved by the annexed copies of their national identity cards which are annexed to the summons (annexture ‘MS-2’).
10. The couple got married under customary law in the year 2008. They later solemnized their union on August 4, 2021. A copy of their marriage certificate serial number xxxx is annexed to the summons.
11. The applicants have no biological children of their own. They now wish to adopt a child in order to complete their family and to fulfil their desire to have a child of their own.
12. The applicants are both in gainful employment. The 1st applicant runs her own business whilst the 2nd applicant works with the ministry of [particulars withheld]. Copies of his payslips are annexed to the summons (annexture ‘MS-3’). The applicants have also annexed a copy of a bank statement for an account held at [particulars withheld]. I am satisfied that the applicants are financially stable and have the means to provide for the needs of the child.
13. The applicants are both christians and intend to raise the child in the Christian faith. They were both examined medically and were found to be mentally and physically fit.
14. The applicants have each annexed copies of clearance certificate issued to them by the Directorate of Criminal Investigations (pages 33-34) proving that neither has a criminal record.



15. The applicants told the court that their extended family are aware of and support their intention to adopt the subject child. They have appointed the 1st applicant's sister as the legal guardian for the child. The proposed legal guardian EWK has signed an affidavit of consent dated November 18, 2022.
16. All in all I am satisfied that the applicants are suitable adoptive parents.
17. The subject child was born on July 25, 2020. The child was abandoned at birth near a river at Wambugu Farm in Nyeri county. The baby was rescued by a good samaritan and the abandonment was reported at Nyeri Police Station *vide* OBnumber xx of July 25, 2020. The baby was immediately rushed to Nyeri Provincial General Hospital for medical attention.
18. Thereafter on August 13, 2020 the child was committed to New Life Home Trust in Nyeri. On June 11, 2021 the child was placed in the custody of the applicants under a foster care agreement.
19. Article 14 (4) of the *Constitution* of Kenya 2010 provides that: -
 - “(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.”
20. The subject child was abandoned at birth in Nyeri County within the Republic of Kenya. He is therefore presumed to be a Kenyan citizen by birth.
21. Efforts to trace the biological mother/relatives of the child have been unsuccessful. To date no person has come forward to the claim the child. The final police letter dated March 23, 2021 appears at page 36 of the summons.
22. Given the fact of the child's abandonment there exists no known person from whom consent for this adoption can be sought and/or obtained. I therefore waive the requirement for consent in line with section 187 (1) (a) of the *Children Act* 2022.
23. 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).
 - (1) In all actions concerning children, whether undertaken by public or 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)
24. This is a child who was abandoned at birth. 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 stable and loving home environment.
25. The child has lived with the applicants since June 2021. He has undoubtedly bonded with the applicants. This is the only family the child knows.
26. I was able to see the child inline. He was a healthy toddler who was engrossed in playing with his tablet. The child was able to answer basic questions put to him by the court.



27. A home visit was conducted by the children's officer. The applicants reside in a two bed-roomed house in Maziwa Estate in Kahawa West. The home is well furnished within a secure compound. It was found to be suitable environment for raising the child.
28. I have perused the reports prepared by the adoption agency, the guardian *ad litem* and the Director Children's Services. All three reports are positive and all recommend the adoption.
29. Finally I find that this adoption will serve the best interests of the subject-child. I therefore allow this application and make the following orders:-
- 1) The applicants MWK and SMN are authorized to adopt the child known as Baby MW.
 - 2) Upon adoption the child will be known as SDM.
 - 3) The child is presumed to be a citizen of Kenya 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) EWK is appointed as the legal guardian for the child.

DATED IN NAIROBI THIS 19TH DAY OF MAY 2023.

.....

MAUREEN A. ODERO

JUDGE

