



**In re MP (Child) (Adoption Cause E160 of 2021)  
[2023] KEHC 18091 (KLR) (Family) (19 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 18091 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
ADOPTION CAUSE E160 OF 2021  
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 MP (THE CHILD)**

**IN THE MATTER OF**

**PO ..... 1<sup>ST</sup> APPLICANT**

**MO ..... 2<sup>ND</sup> APPLICANT**

**JUDGMENT**

1. Before this court is the originating summons dated November 16, 2021 by which the applicants PO and MO seeks the following orders:-
  - “1. That the consent of the biological parents of Baby MP be and is hereby dispensed with since the infant was abandoned by his biological mother.
  2. That the applicants be and is hereby authorized to adopt Baby MP and the child be called SOO henceforth.
  3. That KO be appointed the legal guardian to the minor.
  4. That the court does issue such other orders as may be necessary in the best interest of the child.”
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 to each other in the 1995. Their union has been blessed by four (4) daughters three of whom are adults. The Applicants now wish to adopt the subject child in order to expand their family.
4. The Applicants confirm that they both understand the legal implications of an adoption order. They undertake to accord to the subject-child all the rights due to a biological child including the right to inherit.

### **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 believed to have been born on August 29, 2016. He is now aged Seven (7) years old and is above the Six (6) weeks age limit provided for in law.
8. KKPI Adoption Society which is a registered Adoption Society have annexed to their report a copy of their certificate serial Number 778 dated 8<sup>th</sup> December 2018 declaring the child Free For Adoption. I find that the legal prerequisites 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 copies of their National Identity Cards which are annexed to the summons (Exhibit 10).
10. The Applicants are a couple who got married under Gusii Customary law in the year 1995. They later solemnized their union on November 3, 2010. A copy of their Marriage Certificate Serial Number 184489 appears as Exhibit 8 to the summons.
11. The couple have four daughters, three of whom are adults. They now wish to adopt the subject-child out of their desire to have a son.
12. The Applicants are both in gainful employment. The 1<sup>st</sup> Applicant runs a publishing business whilst the 2<sup>nd</sup> Applicant works as a Nurse at the Ongata Rongai Clinic. She has annexed copies of her payslip as proof of employment (Exhibit 11 (b)).
13. They have also annexed a copy of a bank statement for an account held at the Kenya Commercial Bank (Exhibit 11 (a)). I am satisfied that the Applicants are financially secure and are capable of providing for the needs of the child.
14. The Applicants are both Christians and intend to raise the child in the Christian faith. They both were examined by a Doctor and were found to be mentally and physically fit.



15. The Applicants have annexed copies of clearance certificates issued to them by the Directorate of Criminal Investigations (Exhibit 11(c)) proving that neither has a criminal record.
16. The Applicants told the court that their extended family are aware of and support their intention to adopt the subject child. The Applicants daughters LKO, LBO and JNO have all written letters signifying their consent to the adoption of the child by their parents.
17. Two of the Applicants daughters LB and HNO testified in court. The two confirmed that they were aware of and consented to the adoption of the subject child by their parents. They stated that they had already embraced the child as their younger brother.
18. The Applicants have appointed KO as the legal Guardian for the child. The proposed legal guardian has signed a consent dated 16<sup>th</sup> November 2021 confirming his willingness to act as the legal guardian for the child.
19. All in all I am satisfied that the Applicants are suitable adoptive parents.
20. The subject child was born at Space Care Health Services on the Kawangware area of Nairobi County. The child's biological mother who gave her name as LM, absconded from the clinic after delivery leaving her baby behind.
21. The abandonment was reported at Riruta Police Station vide OB Number 39 of 29<sup>th</sup> August 2016.
22. On August 29, 2016 the child was referred to Kenyatta National Hospital for medical checkup. On March 21, 2018 the Nairobi Children Court committed the baby to House of Charity Children Home. On December 15, 2018 the child was released into the custody of the Applicants under a Foster Care Agreement.
23. Later a woman called K came forward claiming to be the biological mother of the child. The Children Court directed that a DNA test be conducted to establish the veracity of her claims. Two (2) DNA tests which were conducted at KEMRI and Lancet excluded the said K as the child's mother.
24. 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.”
25. This is a child who was abandoned upon delivery in the Kawangware area of Nairobi County within the Republic of Kenya. He is therefore presumed to be a citizen of Kenya by birth.
26. Efforts to trace the biological mother of the child have borne no fruits. To date no other person has come forward to claim the child. A final Police letter dated 21<sup>st</sup> March 2018 appears as Exhibit 4 to the summons.
27. Given the fact of his 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.
28. 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)

29. This is a child who was abandoned upon birth. He faced an uncertain future living in children’s homes and other similar institutions. This adoption accords the child the opportunity to be raised in a loving and stable home environment.

30. The child has lived with the Applicants in their home since the year 2018. He has no doubt bonded with the entire family. This is the only home the child knows.

31. A Home visit was conducted by the Children’s Officer. The Applicants reside in their own four bed-roomed home in Lang’ata. They have engaged a Nanny to assist in caring for the child. The home is in a secure compound and is close to social amenities like shops, schools, churches etc. It was found to be a suitable environment for raising a child.

32. I have perused the reports prepared by the Adoption Society, the Guardian Ad Litem as well as the Director Children’s Services. All three reports were positive and all recommend the adoption.

33. Finally I find that this adoption serves the best interest of the subject. Accordingly I allow this application and make the following orders:-

- 1) The Applicants PO and MO are authorized to adopt the child known as Baby MP.
- 2) Upon adoption the child will be known as SOO.
- 3) The child is presumed to be a citizen of Kenya by birth and is entitled to all the rights and privileges thereto.
- 4) The Registrar General is directed to make the relevant entry in the Adopted Children’s Register.
- 5) KO is appointed as the legal guardian for the child.

**DATED IN NAIROBI THIS 19<sup>TH</sup> DAY OF MAY 2023.**

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**MAUREEN A. ODERO**

**JUDGE**

