



REPUBLIC OF KENYA



**In re Baby JK aka JKM (Child) (Adoption Cause E138 of 2022)
[2023] KEHC 17917 (KLR) (Family) (15 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 17917 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E138 OF 2022
MA ODERO, J
MAY 15, 2023
IN THE MATTER OF CHILDREN'S ACT NO 8 OF 2001
AND
IN THE MATTER OF ADOPTION OF BABY JK AKA JKM (THE CHILD)
IN THE MATTER OF
NNK APPLICANT**

JUDGMENT

1. Before this court is the Originating Summons dated 1st August, 2022 by which the Applicant NNK seeks the following orders:-
 - “ 1. That the Applicant be authorized to adopt baby JK aka JKM a child and who is to be known as LK and the Registrar General be directed to enter this adoption into the Register of Adoptions.
 2. That DNG be appointed as the legal Guardian of the minor.
 3. That the child be presumed to be born in Kenya”.
2. The application was supported by the statement of even date sworn by the Applicant. The matter was canvassed by way of vive voce evidence on the virtual platform
3. The Applicant is a single woman who was once married but later divorced. She has three adult biological children of her own. The Applicant now wishes to adopt the subject child out of her desire to provide a needy child with a home.
4. The Applicant confirmed that she understands the legal implications of an adoption order. She undertakes to accord to the subject child all 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 4th August, 2012. He is now aged ten and a half (10½) years old and is well above the six (6) week age limit provided for by law.
8. Buckner Kenya Adoption Services which is a Registered Adoption Agency have annexed to their report the Certificate Serial No.0026 dated 11th April, 2014 declaring the child Free For Adoption. Accordingly, I find that all the legal prerequisites for an adoption order have been meet.
9. The duty of this court is to analyze the evidence on record to determine whether the Applicant is a suitable adoptive parent. The Applicant is a Kenyan citizen as evidenced by the copy of her National Identity Card which is annexed to the Summons (Page 1).
10. The Applicant got married to one JGG on 24th September, 2014. A copy of their Marriage Certificate Serial No.xxxx if annexed at Page 3 of the Summons. The couple commenced this adoption application together as joint Applicants.
11. However, the Applicant and her husband were later divorced. A copy of the Decree Nisi dated 10th March, 2020 is annexed to the Summons. The Applicant opted to proceed with this application as a sole Applicant. She told the court that she was touched by the plight of homeless children and desired to provide a needy child with a home.
12. The Applicant is a business woman. She has annexed to the Summons copies of Business Permits for her said businesses (Page 23 to 24). The Applicant has also annexed copies of Bank Statements issued by Jamii Bora Bank (Page 25 to 27). I am satisfied that the Applicant is financially stable and is in a position to provide for the needs of the child.
13. The Applicant is a Christian and intends to raise the child in the Christian faith. Annexed to the Summons is a copy of a letter of recommendation (Page 22) written by Pastor BM of [Particulars Withheld] church in Komarock where the Applicant worships.
14. The Applicant was examined by a Doctor and was found to be both physically and mentally fit. She has annexed to the Summons a copy of a Clearance Certificates issued to her by the Directorate of Criminal Investigations confirming that the Applicant has no criminal record.
15. The Applicant told the court that her children were aware of and support her intention to adopt the subject child. PW2 DG who is a daughter to the Applicant testified in court and confirmed that she fully supports her mother's intention to adopt the subject child. The other children of the Applicant GG and HW have both written letters consenting to the adoption of the child by their mother.



16. The Applicant has appointed her daughter as the Legal Guardian for the child. The proposed legal Guardian DNG has signed a consent dated 1st August, 2022.
17. All in all, I am satisfied that the Applicant is a suitable adoptive parent.
18. The subject child is a boy child who was on 13th August, 2012 inside a matatu abandoned at the age of only One (1) day old. Passengers in the vehicle rescued the child and reported the matter at Kayole Police Station vide OB No.xxxx.
19. Thereafter on 19th April, 2013 the Nairobi Children’s Court committed the child to Imani Children’s Home for care and protection. On 20th April, 2014 the child was released into the custody of the Applicant under a Foster Care Agreement.
20. 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.”
21. This is a child who was abandoned a day after her birth in Nairobi County within the Republic of Kenya. The child is therefore, presumed to be a citizen of Kenya by birth.
22. Efforts to trace the biological mother of the child have been unsuccessful. To date no person has come forward to claim the child. A final police letter dated 21st January, 2013 is annexed at page 32 of the Summons.
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 shortly after 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 loving and stable home environment.
25. The child has lived with the Applicant and her family for a period of nine (9) years. Undoubtedly, he has bonded with the family. The Applicants children confirm that they have embraced the child as their younger brother.
26. I was able to see the child online. He was a healthy, happy and engaging young boy who cheerfully answered all the questions put to him by the court.
27. The child expressed that he was comfortable and happy being with the Applicant whom he referred to as Mum.
28. “Section 186(8) (a) of the Children Act 2022 provides that –



- (a) a parent or guardian of the child, or any person who is liable by virtue of any order or agreement to contribute to the maintenance of the child;
- (b) on the application of one of the spouses, the consent of the other spouse; and
- (c) in the case of a child who has attained the age of ten years, the child himself or herself.” [own emphasis]

- 29. The subject child has given his written consent to this adoption vide her letter dated 2nd March, 2023.
- 30. A home visit was conducted by the Children’s. Reports the Applicant has two residencies. One at B-Centre in Kayole and another home in Ruai. The Ruai home is a five bed-roomed mansionnete within a secure compound. It has adequate space and facilities for a young child and was found to be a suitable environment.
- 31. I have carefully perused the reports prepared by the Adoption Agency the Guardian Ad Litem and the Director Children’s Services. All three reports were positive and all recommended the adoption.
- 31. Thirdly, 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 NNK is authorized to adopt the child known as baby JK aka JKM.
 - 2. Upon adoption the child will be known as LK.
 - 3. The child is presumed to be a Kenyan citizen 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. DNG is appointed as the legal Guardian for the child.

DATED IN NAIROBI THIS 15TH DAY OF MAY, 2023.

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MAUREEN A. ODERO

JUDGE

