



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
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**In re Baby OB (Adoption Cause E032 of 2023)
[2023] KEHC 18695 (KLR) (Family) (12 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 18695 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

ADOPTION CAUSE E032 OF 2023

PM NYAUNDI, J

MAY 12, 2023

IN THE MATTER OF THE CHILDREN'S ACT NO. 29 OF

2022

AND

IN THE MATTER OF ADOPTION OF BABY OB AND

AND IN THE MATTER OF AN APPLICATION FOR

ADOPTION

BY

IN THE MATTER OF

JWG 1ST APPLICANT

NWN 2ND APPLICANT

JUDGMENT

1. The Applicants, JWG and NWN, vide Originating Summons dated February 17, 2023 have made an application for the adoption of BABY OB the minor herein. The Applicants are both Kenyan citizens and married on September 29, 2012 as per marriage certificate Serial No. 26XXX2. They both testified in Court as PW1 and PW2 respectively. They are both gainfully employed and have the means to provide for the minors needs. They have had custody of the minor for the last 10 months and are desirous of providing a loving home for the child.
2. They both understand the implications of the adoption and are committed to having the minor be part of their family with all the rights of a biological child.



3. PW3 RW is the proposed legal guardian. She is a sister in law to the 2nd Applicant and consents to being appointed legal guardian alongside her husband HNN (PW4). The couple has 3 children of their own, aged 7 years, 4 years, and 2 Years.
4. PW5 Winfred Ikinya is the Assistant Director, Directorate of Children Services. She presented before Court their report dated April 12, 2023, that recommends the Adoption.
5. The Report confirms that the child was taken to Kitengela Sub County Hospital on 8th November 2021 by an unidentified male and abandoned there. The matter was reported at Kitengela Police Station on 9th November 2021 vide OB / NO. 32/O9/11/2021. The child was placed under the care of Mahali Pa Maisha on 5th January 2022 by the Kitengela Sub County Children's office.
6. On January 13, 2022, the Sub County Children Office moved the Children's Court at Kajiado for a committal order vide Care and Protection Case No. E 001/2022.
7. On May 9, 2022, the Police confirmed that no one had come forward to claim the child. Prior to the adoption proceedings the Change Trust undertook an assessment and confirmed the applicants to be suitable adoptive parents and confirmed that the minor was available for adoption vide certificate Serial No.00472.
8. PW6, JN, The Guardian Ad Litem presented his report dated 17th April 2023 in which he confirmed that he undertook home visits and interview of the Applicants and based on his observation that the Applicants and minor had bonded well, recommends the Adoption.
9. After carefully assessing the records herein, I am satisfied that the applicants have fulfilled all the legal requirements relating to the Child's adoption. Section 186 of the *Children Act*, 2022 provides.
 1. The Court may make an adoption order on application by—
 - (a) a sole applicant; or
 - (b) two spouses jointly.
 2. The Court shall not make an adoption order in any case unless—
 - (a) the applicant has attained the age of twenty-five years, but is not above the age of sixty-five years; and
 - (b) the applicant, or both of the applicants in a joint application, is more than twenty-one years older than the child.
 3. The restrictions in subsection (2) shall not apply in any case where a sole applicant or one of the joint applicants is the mother, father or relative of the child.
10. The Applicants are aged 42 and 44 years respectively.
11. Article 53 of *the Constitution* of Kenya, 2010 provides the overarching principles which must apply whenever any decision concerning a child is to be considered. It states:
A Child's Best interests are of paramount importance in every matter concerning the child
12. This principle is restated in Under Section 8 of the *Children Act* , 2022 which provides;
Best interests of the child.
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;
- (b) the best interests of the child shall include, but shall not be limited to the considerations set out in the First Schedule.

Section 194 (1) (c) of the Act also requires that if the adoption order is made the order will be in the best interests of the child, having regard to the wishes of the child, depending on the child's age and understanding, and to the ability of the applicant to maintain and educate the child;

13. In view of the foregoing the court is of the considered view that it is in the child's best interest to be adopted by the Applicant. Accordingly, I allow the prayers sought in the Originating Summons dated 11th November 2021 and order as follows:

- i. The Applicant JWG and NWN are allowed to adopt BABY OB
- ii. The Child to be known as GWW
- iii. The minor's date and Place of Birth is 8TH November 2021 at Kitengela
- iv. The Child to be presumed to be a Kenyan Citizen
- v. HNN and RMW are hereby appointed as legal guardians of the Child.
- vi. The Registrar be and is hereby directed to enter this adoption into the Register of Adopted Children
- vii. The Guardian Ad Litem is hereby discharged.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 12TH DAY OF MAY, 2023.

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**P M NYAUNDI
HIGH COURT JUDGE**

In the presence of

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No Appearance by parties

Karani Court Assistant

