



REPUBLIC OF KENYA



**In re Baby B aka A (Adoption Cause E098 of 2022)
[2023] KEHC 17462 (KLR) (Family) (9 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 17462 (KLR)

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

FAMILY

ADOPTION CAUSE E098 OF 2022

RL KORIR, J

MAY 9, 2023

IN THE MATTER OF BABY B AKA A

IN THE MATTER OF

PKM 1ST APPLICANT

EMM 2ND APPLICANT

JUDGMENT

1. The Originating Summons before me dated June 8, 2022 seeks the following orders: -
 - i. That the applicants be authorized to adopt Baby B aka A an infant and who is to be known as BMM and the Registrar General be directed to enter this adoption into the Register of Adoptions.
 - ii. That SM and BK be appointed as the legal guardians of the minor.
 - iii. That the child be presumed to born in Kenya.
2. The Application is supported by the joint statement of the applicants and their sworn affidavit dated June 6, 2022. On record are the following documents: -
 - i. A report of Buckner Kenya Adoption Services dated July 1, 2022 declaring the baby free for adoption.
 - ii. Consent to act as legal guardians signed by SM and BK sworn and dated June 6, 2022.
 - iii. A Report by the Department of Children's services dated October 27, 2022 recommending the adoption.



- iv. A Report by the court appointed Guardian ad Litem Rodah Murkali Mbogo dated January 19, 2023.
3. The Application was urged orally on the court's virtual platform by Ms. Muhanda the Applicant's counsel. The 1st and 2nd applicants told the court that they had been married for a long time and were aged 53 and 52 respectively and desired to adopt a child as they had not been blessed with any biological children. The Guardian Ad Litem, Rodah Murkali Mbogo confirmed her report and further stated her recommendation that the couple fits the bill for adoptive parents. Ms. Mary Kamiri of Bukner Kenya Adoption Services told the court that they had made an assessment and placed the minor with the family and recommended the adoption.

Analysis And Determination

4. The governing law in this Application is the Constitution and the Children's Act 2022. Article 53 (2) of the Constitution which provides: -

A Child's best interest are of paramount importance in every matter concerning the child.

5. 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)

6. Section 184(1) of the Children's Act 2022 provides as follows: -

“(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 duty of this court therefore is to secure the best interest of the child by ascertaining that the law was complied with and determining whether the Applicants were suitable adoptive parents.
8. The child Baby B aka A is estimated to have been born on 1st August, 2019 and abandoned. The Children's Court committed him to Happy Life Children home on October 9, 2019. Buckner Kenya Adoption Society declared the child free for adoption vide their report dated July 1, 2022 and certificate serial No. xxxx dated November 13, 2020.
9. I have considered the report of the Children officer Damaris Koborah dated October 27, 2022 and countersigned by Nancy Waswa the County Children's Co-ordinator.
10. The Report confirms that the child was free for adoption and has bonded well with the applicants who have cared for him since placement on September 5, 2020. The applicants are stated to have a home in Ruiru where they also have a business. The applicants are stated to have a joint income of kshs.70,000/= from business and farming.



11. I find from the above and from my observation of the interaction of the child with the applicants on the virtual platform that they have bonded well. It is my conclusion also that they were financially able to care for the child.
12. I have considered the Report filed by the Guardian Ad Litem Rodah Murkali Mbogo dated January 19, 2023 as well as the consent of the proposed Guardians.
13. I am satisfied that the best interest of the minor will be served in allowing this Application. I therefore grant the orders that: -
 - i. The applicants PKM and EMM are authorized to adopt the child known as Baby B aka A henceforth known as BMM.
 - ii. The child shall be presumed to have been born on August 1, 2019 in Nairobi.
 - iii. The Registrar – General is directed to make relevant entry in the Adopted Children’s Register.
 - iv. SM and BK are hereby appointed the legal Guardians for the child.
 - v. The Guardian Ad Litem is hereby discharged.

Orders accordingly

JUDGEMENT DELIVERED, DATED AND SIGNED AT BOMET THIS 9TH DAY OF MAY, 2023

.....

R. LAGAT-KORIR

JUDGE

Judgment delivered in the presence of the Applicants, Ms. Muhanda for Applicants and Siele (Court Assistant)

