



**In re P (Baby) (Adoption Cause E209 of 2022)
[2023] KEHC 18365 (KLR) (Family) (5 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 18365 (KLR)

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

FAMILY

ADOPTION CAUSE E209 OF 2022

PM NYAUNDI, J

MAY 5, 2023

IN THE MATTER OF THE CHILDREN'S ACT ,2022

IN THE MATTER OF ADOPTION OF BABY P

IN THE MATTER OF

DMM 1ST APPLICANT

BRN 2ND APPLICANT

JUDGMENT

1. Vide Originating Summons dated November 24, 2022, the Applicants seek the following orders:
 - I. That the Applicants be authorised to adopt baby P who is to be known as ALM and the Registrar General be directed to enter this adoption into the Register of Adoptions.
 - II. That SM and EMN be appointed as the legal guardians of the Child.
 - III. That the Child be presumed to be born in Kenya.
2. The Application was supported by the statements of even date made by the Applicants, DMM and BRN . The matter was canvassed by way of Viva Voce evidence on the virtual platform.
3. The applicants are husband and wife having married in June 2015. The Couple have decided to adopt a child as they are unable to have one of their own. Both are in gainful employment. The husband works with the [Particulars withheld] as the Deputy Director ICT. The wife is a dentist working with [Particulars withheld] Hospital. the Couple has a home both in [Particulars withheld] , Kisii and Kitengela, Kajiado County.



4. Both their families are supportive of the adoption. The father to DMM has filed a consent and recommendation dated September 20, 2021. Recommendations and letters of Support have also been filed by EN, VNO and Pastor Mosses Atemba of Seventh Day Adventist Church, Nakuru.
5. The minor was abandoned on February 19, 2022 at [Particulars withheld] Slums in a pit latrine and was rescued by a good Samaritan who took her to Kenyatta National Hospital. The report of abandonment was made at Kenyatta Police post vide OB NO 06/xx/xx/2021.
6. The Child was committed to Happy life Children's Home on August 3, 2021 and later by order of the Children's Court at Nairobi through Protection and Care Case No E4xx of 2021.
7. On May 20, 2022, the Kenyatta Police Post confirmed that no one had come forward to claim the child. Prior to the adoption proceedings Buckner Kenya Adoption Society prepared a report and declared the child free for adoption Vide certificate serial no 0568 dated June 13, 2022.
8. The child has been in the care of the Applicants since June 27, 2022 and has bonded well with the adoptive parents and the extended family. The minor was present in court with the parents and the Court observed that the Child was calm and asleep.
9. The proposed Legal Guardians, SM and EMN were both present in court and confirmed that they are prepared to take on this role and understand the commitment they are making and the obligation that is upon them to take responsibility for the child in the event the applicants are unable to fulfil their role.
10. The Guardian Ad Litem, Violet Ombati was present in Court and submitted her report dated February 14, 2023 in which she recommends the Adoption.
11. Irene Ogutu from Buckner Kenya Adoption Services confirmed that they have filed their report dated February 22, 2023 in which they support the adoption.
12. Sammy Rioba on behalf of the Directorate of Children services confirms that he undertook an assessment and filed a report dated February 16, 2023 in which they recommend the adoption.
13. 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.
14. The Applicants are aged 40 and 34 respectively.



15. 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

16. This principle is restated in Under Section 8 of the Children Act, 2022 which provides

Best interests of the child.

(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;

(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 Children Act, 2022 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;

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 Applicants. Accordingly, I allow the prayers sought in the Originating Summons dated August 8, 2022 and order as follows:

- i. That the Applicants DMM and BRN be authorised to adopt baby P
- ii. That the said child be known as ALM
- iii. That the Child be presumed to be a Kenyan Citizen born on February 19, 2021
- iv. That SM and EMN be appointed as the legal guardians to the Child
- v. That the Registrar makes the appropriate entries into the Register of Adopted Children
- vi. The Guardian *Ad Litem* is hereby discharged.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 5TH day of MAY, 2023.

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P M NYAUNDI

HIGH COURT JUDGE

In the presence of;

Advocates for the Applicant

