



**In re Unknown African Baby Girl alias MB (Adoption Cause E205 of 2022)
[2023] KEHC 17626 (KLR) (Family) (5 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 17626 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E205 OF 2022
MA ODERO, J
MAY 5, 2023
IN THE MATTER OF CHILDREN’S ACT NO 8 OF 2001
AND
IN THE MATTER OF ADOPTION OF BABY UNKNOWN AFRICAN BABY GIRL ALIAS MB
BY
IN THE MATTER OF
JWN APPLICANT**

JUDGMENT

1. Before this court is the Originating summons dated November 18, 2022 by which the Applicant JWN seek the following orders:-
 1. That the Applicant be authorized to adopt BABY MB a child who is to be known as TWN and the Registrar General be directed to enter this adoption into the Register of Adoptions.
 2. That WSN and PW be appointed as the Legal Guardians of the child.
 3. That the child be presumed to be born in Kenya.”
2. The Summons 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 mother who has never been married. She has one son aged seven (7) years old. The Applicant now wishes to adopt a child in order to expand her family and out of her desire to provide a needy child with a home.



4. The Applicant confirms 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 rights 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 a girl child who is believed to have been born on September 8, 2021. The child is now aged one and a half (1½) years old and is above the six (6) weeks age limit provided for by law.
8. Bucker Kenya Adoption Services, have annexed to their report a copy of their Certificate Serial Number 0578 dated July 27, 2022 declaring the child Free for Adoption. I am satisfied that the legal prerequisites for an adoption order have been met.
9. The duty of this court is to analyze the evidences 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 (pages 1-2 of the Summons).
10. The Applicant is a single mother who has never been married. She has one biological child a son who was born on April 6, 2016. A copy of the child's Birth Certificate Serial Number 67XXX56 is annexed to at page 44 of the Summons.
11. The Applicant now seeks to adopt the subject child in order to expand her family and out of her desire to provide a needy child with a home.
12. The Applicant is a medical Doctor and is currently employed by the [Particulars Withheld] as a Technical Officer. She who earns a monthly income of Kshs 480,000/=. The Applicant has annexed to the Summons copies of her payslip as proof of employment (pages 33-35).
13. The Applicant has also annexed copies of her Bank Statement issued by the Standard Chartered Bank (pages 26-32). She also owns land in Kajiado where she is putting up rental units. I find that the Applicant is financially stable and has sufficient means to provide for the child.
14. The Applicant is a Christian and intends to raise the child in the Christian faith. At page 25 of the Summons is a letter of recommendation dated February 24, 2022 written by Pastor George Masha of the Ridgeways Baptist Church where the Applicant worships.
15. The Applicant was examined by a Doctor and was found to be both mentally and physically fit. She has annexed a copy of a Clearance Certificate issued to the Applicant by the Directorate of Criminal Services (pages 45 - 46) proving that she has no criminal record.



16. The Applicant told the court that her extended family are aware of and support her intention to adopt the subject child she has appointed her sister and brother in-law as the legal guardian for the child.
17. The proposed legal Guardians PWN and WSN, have both signed the Affidavit of consent dated November 17, 2022 confirming their willingness to act as the legal guardians for the child.
18. All in all, I am satisfied that the Applicant is a suitable adoptive parent.
19. The subject child is believed to have been born on September 4, 2021. On September 8, 2021 the child was abandoned inside a bus at the OTC Stage in Nairobi County at the age of five (5) days old. A good Samaritan rescued the baby and reported the abandonment at Kamkunji Police Station vide OB Number 128 of September 8, 2021.
20. Thereafter on April 13, 2022, the Nairobi Children’s Court committed the child to Happy Life Children’s Home for care and protection. On July 30, 2022, the child was released into the custody of the Applicant under a Foster Care Agreement
21. 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.”
22. The subject child was found abandoned at the tender age of five (5) days old inside a bus at OTC Stage, Nairobi County within the Republic of Kenya. The child is therefore presumed to be a citizen of Kenya by birth.
23. Efforts to trace the biological mother and/or relatives of the child have borne no fruit. To date no person has come forward to claim the child. A final police letter dated July 21, 2022 is annexed at page 53 of the Summons.
24. Given the fact of the child’s 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 online with Section 187 (1) (a) of the *Children Act 2022*.
25. 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)
26. This is a child who was abandoned a few days after her birth. She 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.
27. The child has lived with the Applicant and her family since July, 2022. She has undoubtedly bonded with the Applicant and her son – indeed this is the only family the child knows.
28. I was able to see the child online – she was a healthy calm toddler who was clearly at ease in the arms of the Applicant.



29. A home visit was conducted on April 12, 2022. The Applicant lives in a rented two bed-roomed Apartment at Fourways Estate along Kiambu Road. The home was found to be spacious with sufficient facilities to cater for the child. The house is close to other social amenities like schools, churches, hospital, shopping malls etc. The Applicant has also engaged a nanny to assist in caring for the child.
30. 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 recommend the adoption.
31. Finally, I am satisfied that the adoption serves the best interest of the subject child. Accordingly, I allow this application and make the following orders:-
 1. The Applicant JWN is authorized to adopt the child known as Baby Unkwon African Baby Girl alias MB.
 2. Upon adoption the child will be known as TWN.
 3. The child is presumed to be a Citizen of Kenyan 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. PW Njoroge and WSN are appointed as the Legal Guardians of the child.

DATED IN NAIROBI THIS 5TH DAY OF MAY, 2023.

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MAUREEN A. ODERO

JUDGE

