



REPUBLIC OF KENYA



**In re Baby MN (Adoption Cause E060 of 2020)
[2023] KEHC 17946 (KLR) (Family) (4 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 17946 (KLR)

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

FAMILY

ADOPTION CAUSE E060 OF 2020

EKO OGOLA, J

MAY 4, 2023

IN THE MATTER OF THE CHILDREN'S ACT, 2001

AND

IN THE MATTER OF ADOPTION OF BABY MN ALIAS UNKNOWN AFRICAN CHILD

IN THE MATTER OF

KN APPLICANT

JUDGMENT

1. Before this Court is the Originating Summons dated October 1, 2020 by which the applicant KN seeks the following orders: -
 1. Spent
 2. That the Director of Children Services, Ministry of Labour, Social Security and Services investigate the Applicant's fitness to adopt and file a report
 3. That the Applicant be authorized to adopt Baby MN Alias Unknown African Child (one) to be known as JKG .
 4. That the child be presumed a Kenyan Citizen by birth
 5. That the child's date of birth be November 18, 2018 and the place of birth be Nairobi.
 6. That the Registrar General be directed to enter the adoption in the Adopted Children Register
 7. That the director Immigration be authorized to issue the child with a Kenyan Passport



8. That CWN be appointed the legal guardian of the child in the event of the death or incapacity of the Applicant before the child is of the age or independent
9. That the court be pleased to make any further orders it deems necessary.
2. The Summons was supported by the statement of even date sworn by the applicant. The matter was canvassed by way of *viva voce* evidence on the online platform.
3. PW1 KN testified that she is a HR Consultant based in Nairobi, is single and does not have any children. PW1 was given the child on August 25, 2019 and her family agrees with the Application for adoption. PW1 understands that the child will be entitled to inherit her property. PW1 has appointed her sister as the legal guardian.
4. PW2 was Peris Kahara the court appointed guardian *ad litem* working for Buckner Kenya Adoption Services. PW2 has filed a report recommending the adoption.
5. PW3 was Caroline Olilo from the department of Children Services. PW2 has filed a report dated July 22, 2021 which recommends the adoption.

Determination

6. I have carefully considered this application for adoption the various Affidavits and Reports on record as well as the relevant law. I have also considered the evidence adduced in open court. The preliminary requirements for the making of an Adoption Order are set out in Section 156(1) of the [Children's Act 2001](#) which provides as follows: -
 - “ 159 No arrangement shall be commenced for the adoption of a child unless the
 - (1) child is at least six (6) weeks old and has been declared free for adoption by a Registered Adoption Society in accordance with the Rules prescribed in that behalf.”
7. The subject child was found abandoned at birth in a drainage in Kibera on November 18, 2018. The child is now above the six (6) week age limit provided for in law.
8. The child was rescued by good Samaritans who reported the matter to Olympic Police Post and thereafter Kenyatta Police Post. The child was taken to Kenyatta National Hospital and upon discharge the child was placed at Imani Children's Home. Thereafter on April 5, 2019 the Nairobi Children's Court formally committed the child to same Children's home. The child was declared free for Adoption as per the Certificate Serial Number xxxx issued by KKPI Adoption Society on August 7, 2019. On August 25, 2019 the child was released into the custody of the Applicant under a Foster Care Agreement. The legal pre-requisites for an adoption order have accordingly been met.
9. The duty of this Court is to analyze the material placed before it and make a determination as to whether the Applicant is a suitable adoptive parent. The Applicant is a Kenyan citizen as per the attached copy of her National Identity marked as KN-8 on the documents supporting the Originating Summons.
10. The Applicant is financially stable; she runs a business known as [Particulars withheld] HR Solutions as evidenced by a copy of the certificate of registration and bank statements marked KN-9. The report by the Guardian ad Litem states that the Applicant is financially stable and in a good position to provide for the needs of the child.



11. The Applicant was examined and found to be physically and mentally fit. Copy of her medical report is marked KN-10. The Applicant has also annexed a copy of her Certificate of Good Conduct marked KN-11 issued by the Kenya Police Service which proves she has no criminal antecedents.
12. The Applicant has appointed CWN as a Legal Guardian of the child. She has signed a consent dated September 30, 2020. The letter of consent, and the copy of her Identity Card have been provided and marked KN-13 and 5b.
13. Based on the foregoing I am satisfied that the applicant is a suitable adoptive parent.
14. Article 14 of the [Constitution of Kenya 2010](#) deals with issue of Citizenship. Article 14(4) provides as follows:
 - "(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."
15. The subject child was abandoned at a drainage in Kibera in Nairobi County which is within the republic of Kenya. The Child is therefore a Kenyan Citizen.
16. In deciding upon any matter involving a child, Courts are obliged to give priority to the best interest of the said child. Section 44(2) of the [Children Act 2001](#) provides: -
 - "(2) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration".
17. The child has lived with the Applicant in her home since she was about nine (9) months old up to the present date. There is no doubt that the child has bonded with the Applicant and considers her as her mother.
18. The various reports filed in court all recommend the adoption. 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 KN is authorized to adopt the child known as Baby MN .
 2. Upon adoption the child will be known as JKG .
 3. The child is declared Kenyan Citizen by birth and is entitled to all the rights and liberties due to a citizen of Kenya.
 4. The child's date of birth is declared to be 18th of November, 2018 in Nairobi.
 5. The Registrar General is directed to make appropriate entries in the Adopted Children's Register
 6. The Registrar Immigration is directed to issue the child with a Kenyan Passport in accordance with Immigration Laws, rules and procedures
 7. CWN is appointed as Legal Guardian of the child in the event of the death or incapacity of the Applicant before the child is of age or independent.

It is so ordered.



DATED, SIGNED AND DELIVERED AT NAIROBI THIS 4TH DAY OF MAY, 2023.

E.K. OGOLA

JUDGE

Judgment read and delivered online in the presence of:

M/s. Ambaka for the Applicants

Ms. Chepkemei Court Assistant

